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IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 11669

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

WALTER KORPAN,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.

STATEMENT IN ACCORDANCE WITH RULE 10(b)
OF THE RULES OF THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

1. The action was instituted by the filing of an Indictment on September 2, 1955.

2. The original and present parties are the United States of America, plaintiff-appellee, and Walter Korpan, defendant-appellant.

3. On September 2, 1955, the date of the filing of the Indictment, the District Court ordered the issuance of a bench warrant and fixing bond at \$1,000.00. On September 8, 1955 defendant and his attorney filed their appearances and on that date defendant, Walter Korpan, filed his appearance bond. On October 17, 1955 defendant entered his plea of not guilty.

4. A trial was had on October 25, 1955 before the Honorable John P. Barnes, Chief Judge of the United States District Court, Northern District of Illinois, Eastern Division; on that day defendant had filed a waiver of jury.

5. On December 5, 1955 the Honorable John P. Barnes entered an order denying defendant's motions for a judgment of acquittal, finding defendant guilty as charged, ordering defendant fined \$750.00 plus costs, and staying execution three days.

6. On December 8, 1955 the Honorable John P. Barnes entered an order overruling defendant's motions for new trial and in arrest of judgment, granting defendant's motion for enlargement on bail pending appeal, and fixing bail on appeal at \$1,000.00, one bond to cover both of the foregoing.

7. Notice of appeal was filed by defendant on December 15, 1955.

Simon Herr

Simon Herr
105 West Monroe Street
Chicago 3, Illinois
Crowley, Sprecher and Weeks

Crowley, Sprecher and Weeks
100 West Monroe Street
Chicago 3, Illinois
Attorneys for Defendant-Appellant

Service of copy of the foregoing Statement is acknowledged
this day of January, 1956.

Attorney for Plaintiff-Appellee

3 PLEAS had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of December (it being the 5th day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty-Five and of the Independence of the United States of America, the 180th Year.

Present: Honorable John P. Barnes, Chief District Judge
Honorable William H. Holly, District Judge
Honorable Philip L. Sullivan, District Judge
Honorable Michael L. Igoe, District Judge
Honorable William J. Campbell, District Judge
Honorable Walter J. La Buy, District Judge
Honorable J. Sam Perry, District Judge
Honorable Win G. Knoch, District Judge
Honorable Julius J. Hoffman, District Judge

Roy H. Johnson, Clerk

William W. Kipp, Sr., Marshal

Monday, December 5, 1955

Court met pursuant to adjournment

Present: Honorable John P. Barnes, Trial Judge

Thursday, December 8, 1955

Court met pursuant to adjournment

Present: Honorable John P. Barnes, Trial Judge

IN THE UNITED STATES DISTRICT COURT

• • • (Caption—No. 55 CR 486) • • •

Be It Remembered, that on to wit, the 2nd day of September, 1955, the above-entitled action was commenced by the filing of the Indictment in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to wit:

5

IN THE UNITED STATES DISTRICT COURT
• • (Caption—No. 55 CR 486) • •

The August 1955 Grand Jury charges:
That during the month of August, 1955,

WALTER KORPAN,

defendant herein, did occupy the premises known as Korpan's Landing at 110 East Lakeview, Fox Lake, Illinois, in the Northern District of Illinois, Eastern Division; and did maintain for use and permitted the use on said premises of certain coin operated gaming devices as defined in Section 4462(a)(2), Title 26, United States Code, by reason of which facts the said Walter Korpan was a person obligated to pay the special occupational tax on coin operated gaming devices imposed by Section 4461(2), Title 26, United States Code; and that well knowing the foregoing facts the said Walter Korpan did wilfully and unlawfully fail to pay the special occupational tax on coin operated gaming devices.

In violation of Section 7203, Title 26, United States Code.

A True Bill

John C. McClure
Foreman

R. Tieken
United States Attorney

6 And afterwards on, to wit, the 8th day of September, 1955 came the Defendant by his attorneys filed in the Clerk's office of said Court his certain Appearance in words and figures following, to wit:

7 IN THE UNITED STATES DISTRICT COURT
• • (Caption—No. 55 CR 486) • •

I enter my appearance as attorney for Walter Korpan, defendant in the above-entitled case.

Dated 9-8-1955

Simon Herr
Address: 1104—111 W. Monroe St.
Chicago 2, Ill.

4

Waiver of Trial by Jury

8 And afterwards, to wit, on the 17th day of October, 1955, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

9

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

This day comes the United States by the United States Attorney comes also the defendant Walter Korpan in his own proper person and by his counsel and being arraigned upon the Indictment filed herein against him pleads not guilty thereto and it is

Ordered that this cause be and the same hereby is set for trial on October 25, 1955 at 10 a.m.

10 And afterwards on, to wit, the 25th day of October, 1955 there was filed in the Clerk's office of said Court a certain Waiver Of Trial By Jury in words and figures following, to wit:

11

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

WAIVER OF TRIAL BY JURY

Comes Walter Korpan, defendant in the above entitled cause in his own proper person and by Simon Herr, his attorney, and the defendant, having been advised in open court by the court of his right to a trial by jury, hereby waives that right and consents to a trial by the court without a jury.

Walter Korpan
Defendant

Simon Herr
Attorney for Defendant.

Robert Tieken, United States Attorney for the Northern District of Illinois, hereby consents to the waiver by the defendant above-named of a trial by jury of the above-entitled cause.

Robert Tieken, United States Atty.

By Wm. A. Barnett

Assistant United States Atty.

Approved:

John P. Barnes

United States District Judge

12 And afterwards on, to wit, the 9th day of November, 1955 there was filed in the Clerk's office of said Court a certain Transcript Of Proceedings Had On October 25, 1955, Before The Honorable John P. Barnes, Chief Judge, in words and figures following, to wit:

14

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois; commencing on Tuesday, October 25, 1955, at 10:00 o'clock a.m.

Appearances:

Hon. Robert Tieken, United States District

Attorney, by

William A. Barnett, Esq., Assistant United States

District Attorney,

on behalf of the Government;

Simon Herr, Esq.,

on behalf of the Defendant.

15 By Mr. Herr: The jury is waived if the Court will permit it.

By The Court: Yes. I understand you are agreeable?

By Mr. Barnett: We have no objection, your Honor.

By The Court: Sign the jury waiver.

By Mr. Herr: (Addressing the defendant) You sign right here.

By The Court: Proceed, gentlemen.

And Thereupon Mr. Barnett Addressed The Court
In Opening Statement On Behalf Of The Government.

By Mr. Barnett: Your Honor, the defendant in this case, Walter Korpan, is charged in the indictment with having occupied premises in Fox Lake, Illinois, and having maintained on such premises certain coin-operated devices which were gaming devices, and this is under 42-62A2, U. S. Code, Title 26.

He is further charged that he was aware he was operating such gaming devices, that he knew he was obligated under the Internal Revenue Code to pay a special occupational tax on such gaming devices.

15½ By The Court: Wait a minute.

Mr. Korpan, will you step forward, please.

You have been advised, or if you have not been you are now advised you are entitled to a trial by twelve men and women in that jury box. You know that?

By The Defendant Korpan: Yes, sir.

By The Court: You said you are willing to waive that and be tried by the court?

By The Defendant Korpan: Yes.

By The Court: You understand there will be no jury in this case, is that right?

By The Defendant Korpan: Yes.

By The Court: Is that what you want?

By The Defendant Korpan: Yes.

By The Court: Very well.

Proceed, gentlemen.

By Mr. Barnett: It is charged in the indictment the defendant Walter Korpan occupied and maintained for use on his premises certain coin-operated gaming devices, that he knew he was subject to the payment of special occupational tax, and notwithstanding he knew that he wilfully and unlawfully failed to pay that tax on the gaming devices.

16 We will produce evidence that he failed to make such payment, and he was advised by special agents of the Internal Revenue Service of the necessity for making such payment; that he admitted to the special agents that he made pay-outs on the machine.

He has denied that he made those pay-outs. He thereafter purchased a music or amusement stamp tax or, I should say, tax stamp, for the fiscal year 1956, beginning on July 1, 1955.

The testimony will show that thereafter he did make pay-outs in his establishment, at least on August 12, 1955; that he admitted on that night after the agents had identified themselves to him that he knew he shouldn't have made those pay-outs without a gaming stamp.

The evidence will also show he has had these machines in his establishment for some time. The machines are not owned by him but are owned by another. Collections are made and allowances are made out of the collected sums for amounts that have been paid out by him to the winning players. Amounts paid out to the winning players are computed by a computing device, a device in the machine, and we will have those machines here,

17 These are the bingo type machines and the machines will be demonstrated in the court, and it is the Government's contention these machines fall within the meaning of the statute requiring that a person who maintains such machines on the premises occupied by him and makes pay-outs on such machines is subject to the payment of the Federal stamp tax on the gaming devices.

Mrs. Vollner, will you please take the stand?

By The Court: Does the defendant care to make a statement?

By Mr. Herr: I would like to.

By The Court: Very well.

And Thereupon Mr. Herr Addressed The Court In Opening Statement On Behalf Of The Defendant.

By Mr. Herr: The defense, your Honor, is that these pin ball machines provide for play-outs upon the result obtained by the player.

The game involves a degree of skill, it is not a slot machine, that sometimes the owners will if the players wish to redeem the plays they are entitled to, by virtue of having accomplished a certain result; that it has not been the legislative intent to tax these machines at the rate of \$250.00 per year, but rather at the rate of \$10.00 a year; that the legislative purpose and intent has clearly been expressed by the Committees in their reports to Congress, both by the House of Representatives and by the Senate, and that they specifically distinguish between this type of machine and the usual or commonly known slot machine, and sometimes referred to in the committees of Congress as "one-arm-bandits."

These machines were distinguished by the committees and in their reports they made a distinction.

Over the years from 1941 up to I believe 1953 enforcement of those "use" tax regulations, the Department has regularly and consistently viewed them as subject to a \$10.00 tax or \$25.00 tax, depending on what tax was passed that year as fixed by Congress.

In 1953 a change occurred in the interpretation by the
18 Department of that Act, and from that time forward they have insisted if the owner redeems the games and pays out for them, rather than have the player playing out as he is permitted to do by virtue of his having won the right to do so, then the owner of the machine they say should pay \$250.00.

That is not by virtue of what the Legislature has done, but by virtue of what the Department has established, contrary to its established practice over a period from 1941 to I think 1953. It may have been 1952, I am not sure.

Now, then, there have been several cases instituted in the United States to reach the issue. One is pending in New Orleans and is a civil action.

Another is pending in still another suit where the Government is contending certain machines require that stamp.

Neither of those has been disposed of. The question now is virtually new, as it is submitted to your Honor.

I would like to point out to the Court here that these are games which require a certain degree of skill; how much

I don't know. I have not played them.

19 Your Honor has so held and your Honor has been affirmed on that case of Chicago Paint Corporation *vs.* Jenko, which you may recall.

There are other cases I have supporting that, and also a substantial amount of record and transcript of the Congressional Committees and of Congress with respect to this legislation.

Its intent clearly and unequivocally expressed is there. If your Honor will permit me I would like to read for one moment—

By The Court: First let's get the facts in before we go into that.

By Mr. Barnett: May I proceed, your Honor?

By The Court: Yes.

By Mr. Barnett: Mrs. Vollner, will you take the stand, please.

20 Thereupon The Government, To Maintain The Issues On Its Part, Introduced The Following Evidence, To Wit:

CLARA K. VOLLMER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Barnett:

Q. Will you state your name, please?

A. My name is Clara K. Vollner.

By The Court: Speak louder. What is your last name?

By The Witness: My name is Clara K. Vollner.

By Mr. Barnett:

Q. Where do you live?

A. 1645 North Monticello Avenue.

By The Court: Is that V-o-l-l-n-e-r?

By The Witness: Yes, Vollner. I live at 1645 North Monticello Avenue.

By Mr. Barnett:

Q. In Chicago?

A. In Chicago, Illinois.

20½ Q. What is your occupation, Mrs. Vollner?

A. Tax technician, miscellaneous tax technician.

Q. In what office?

A. In the office of the District Director of Internal Revenue, First District of Illinois.

Q. Does that office receive returns that are filed from Lake County, Illinois?

A. It does.

Q. Is that the designated office in which such returns are supposed to be filed?

A. That is true.

Q. As a miscellaneous tax technician do your duties include working on special occupational taxes on coin-operated amusement devices and coin-operated gaming devices?

A. It does.

Q. Are you in fact more or less in charge of that section in your office?

A. To a certain extent.

Q. I see. Now, when returns are filed and payment is made for a special occupational tax on either amusement or gaming devices, coin-operated that is, are they filed in your office?

A. They are filed.

21 Q. After payment is made and return is filed are they then under your general supervision?

A. They are under my general supervision.

Q. Is it the custom of the office to keep such returns?

A. It is.

Q. They are part of the records of the office?

A. Yes.

Q. Have you made a search of the files under your general supervision for amusement tax returns or gaming tax returns and payment made therewith of one Walter Korpan of Fox Lake, Illinois?

A. I have.

Q. Did you find any such document filed by Walter Korpan?

A. Yes, I did.

Q. Do you have those documents with you?

A. I do.

Q. May I see them, please?

A. Yes.

(Witness handed document to Mr. Barnett.)

By Mr. Barnett: Will the Reporter please mark these documents Government's Exhibits 1 and 2 for identification?

22 (Thereupon said documents were marked Government's Exhibits 1 and 2 for identification.)

By Mr. Barnett:

Q. I hand you, Mrs. Vollner, Government's Exhibit 1 for identification, which purports to be a special tax return by Walter Korpan for amusement coin-operated amusement devices and ask you if this is the document which was on file in your office as part of the records of your office?

A. It is.

By Mr. Barnett: Your Honor, I offer Government's Exhibit 1 for identification in evidence as Government's Exhibit 1.

By Mr. Herr: No objection.

By The Court: It may be received.

(Said document, so offered and received in evidence, was marked Government's Exhibit 1.)

By Mr. Barnett:

Q. Will you tell us how many devices are shown in that return to have been paid for.

A. Five.

Q. Five coin-operated devices?

23 A. Yes, sir.

Q. For amusement purposes only?

A. It so states.

Q. How much is the amount of the tax for the five devices?

A. \$10.00 each or \$50.00 for the five for one year.

Q. For what year is that filed?

A. July 1, 1955 through June 30, 1956.

Q. What was the date on which it was filed?

A. June 22, 1955.

Q. And does it show payment was received with the return?

A. Yes, it does.

Q. Mrs. Vollner, I now hand you Government's Exhibit 2 for identification which purports to be a return filed by Walter Korpan for gaming devices, and ask you if it is a document taken from the records of your office?

A. It is.

By Mr. Barnett: I offer in evidence, your Honor, Government's Exhibit 2 for identification as Government's Exhibit 2.

By Mr. Herr: No objection.

24 By The Court: It may be received.

(Said document, so offered and received in evidence, was marked Government's Exhibit 2.)

By Mr. Barnett:

Q. Will you examine Government's Exhibit 2, Mrs. Vollner, and tell us the date on which it was filed?

A. It was received in the District Office on December 21, 1955.

Q. And what is it for, how many devices?

A. For three gaming pin ball devices.

Q. How much is the amount of tax paid?

A. \$750.00.

Q. At the rate of how much each?

A. \$250.00 for each device.

Q. Where does it say on the return the machines are located?

A. At Korpan's Landing in Fox Lake, Illinois.

Q. Were you able to find any files of your office, any record of any payment of tax on gaming devices filed or paid by Mr. Korpan for the Government's fiscal year 1956 on any date prior to September 21, 1955?

A. I was not able to find anything else.

25 By Mr. Barnett: You may cross examine.

Cross Examination

By Mr. Herr:

Q. Mrs. Vollner, how long have you been in that office?

A. I have been in that position for twelve years.

Q. And are you acquainted with the form and applications used in connection with making application for tax receipts?

A. I am.

Q. I want to show you a form that now bears at the bottom the mark of Exhibit 7 as a number, and which I will ask that it be permitted to retain that number, because it is part of the exhibits I propose to offer, and has that number on it.

By The Court: Very well.

By Mr. Herr:

Q. (Continuing) Do you recall ever having seen in your department an application on that form?

A. We do. It is a form we used for many years up to about two years ago.

Q. Two years ago that was changed?

26 A. That's right.

Q. The specific change made two years ago for the form prior to two years ago did read, "Coin-operated amusement device (pin ball or all other amusement machines)" \$10.00 per machine was changed as per Exhibit 8 to read, "Coin-operated amusement devices (any amusement or music machines)".

In other words, the words "pin ball" were removed from the application in 1952?

A. That's right.

Q. Since then on pin ball machines where plays are redeemed you require \$250.00?

A. That's right.

Q. Do you know how that change came about?

A. It was changed by law, I am quite sure, by procedure in the office at Washington.

Q. Someone in your department established that as a new regulation, is that right?

A. In the Internal Revenue Service.

By Mr. Herr: There is no other question, your Honor.

By Mr. Barnett: You may step down.

(Witness excused.)

27 By Mr. Barnett: Mr. Lonchar, will you take the stand?

By Mr. Herr: Your Honor, what I have shown this first witness was what is marked as Defendant's Exhibits 7 and 8.

By Mr. Barnett: You are not offering them at this time?

By Mr. Herr: I can't.

By Mr. Barnett: Do we have a copy?

By Mr. Herr: I think I supplied you with a copy of each one of those.

By Mr. Barnett: Mr. Lonchar, will you take the stand now.

DONALD M. LONCHAR, JR., called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Barnett:

Q. Will you state your full name, please?

A. Donald M. Lonchar, Jr.

Q. Where do you live, Mr. Lonchar?

A. I live at 1739 Dickenson in the City of Waukegan, Illinois.

Q. What is your occupation?

A. I am a special agent with the Intelligence Division of the Internal Revenue Service.

Q. How long have you held that position?

A. I have been in the Internal Revenue Service for about five and one-half years and a special agent for approximately two years.

Q. And how long have you been in Waukegan as a special agent?

A. About four and one-half months.

Q. Are you in charge of the office in Waukegan?

A. Yes, sir, I am.

Q. What educational qualifications do you have for your job, Mr. Lonchar?

A. I am a graduate of Northwestern University with a major in accounting, and I have a Juris Doctor degree from DePaul University and I have recently passed the Illinois Bar examination.

Q. What are your duties as a special agent in charge of the Waukegan office?

A. My general duties are the enforcement of the Internal Revenue laws in the counties of Lake and McHenry, Illinois.

29 Q. That includes enforcement of regulations promulgated under the Internal Revenue laws?

A. Yes, it does.

Q. Does the enforcement of special occupational taxes on coin-operated amusement devices and coin-operated gaming devices fall within the purview of your duties?

A. Yes, sir, it does.

Q. During the calendar year of 1956 did you have occasion to make an investigation into the matter of special occupational taxes on gaming devices? I mean in the Waukegan area and in Lake County particularly.

A. Yes, sir.

Q. When was that in 1956?

A. The investigation was conducted initially on June 15, 16 and 17.

Q. I see. Now, during the course of this investigation did you have occasion to visit a place called Korpan's Landing in Fox Lake, Illinois?

A. Yes, sir.

Q. Did you there meet the defendant Walter Kerpan?

30 A. Yes, sir.

Q. Do you see him in the court room now?

A. Yes, sir, I do.

Q. Can you point him out, please?

A. The gentleman sitting over there in the blue suit.

By Mr. Barnett: May the record show the gentleman has identified the defendant.

By The Court: Yes.

By Mr. Barnett:

Q. Give us the date on which you went to Korpan's Landing and called on Mr. Korpan?

A. I called on Mr. Korpan Thursday, June 16, 1955.

Q. Was there anybody with you at that time?

A. Yes, I was accompanied by a collection officer from the Waukegan office.

Q. What was his name?

A. Frank Evangelista.

Q. Was there anybody on the premises at Walter Korpan's establishment at that time?

A. There were a couple of customers when we entered the establishment.

Q. Did you have a conversation with the defendant?

31 A. Yes, I did.

Q. Will you please state what he said to you and what you said to him at that time and place?

A. Well, both Mr. Evangelista and myself identified ourselves as Internal Revenue employees or particularly special agent and collection officer, and asked Mr. Korpan to exhibit his special stamp tax covering the coin-operated devices on his premises for the then current fiscal year ending June 30, 1955.

Mr. Korpan produced the same, which covered the machines on his premises. I then asked Mr. Korpan if, relative to the coin-operated devices, he paid off winners on these machines in either cash, merchandise, premiums or tokens, and he denied the same.

I then spent some time in explaining to Mr. Korpan that under the Internal Revenue laws relative to the taxes on these machines he would be liable to a \$250.00 special tax stamp per machine if it was employed as a gaming device.

He indicated to me that he understood, and I further explained to him that in the event the Federal Government had evidence that he had paid off in cash or its equivalent persons winning on these machines he might be subject to both civil and criminal penalties, and he indicated that he understood this.

Essentially that was the conversation that we had.

Q. Did you notice any coin-operated devices on the premises?

A. Yes, I did.

Q. Will you tell us what the nature of those devices were, and describe them for us?

A. As I faced Mr. Korpan he was across from me and behind the bar in his establishment there were behind me three machines known as bingo machines.

He also had on the premises a shuffle alley type machine and a juke box or music machine.

By The Court: Or what?

By The Witness: Music machine.

By Mr. Barnett:

Q. You say that you asked him for the stamp. Did he exhibit the same to you?

A. I believe he did.

Q. For what year was that stamp?

33 A. For the year ending June 30, 1955.

Q. For the year ending June 30, 1955?

A. At that time he was not—at that moment he was not liable for a tax for the present fiscal year.

Q. Which begins when?

A. Which begins July 1, 1955 and ends June 30, 1956.

Q. Did you tell him on what date he would become liable for the next fiscal year tax?

A. Yes, I explained to him this call was being made in advance of the new filing period which would commence July 1st relative to gaming devices, and if on July 1st he had such gaming devices in operation on his premises he should file special tax stamp returns and pay \$250.00 per each gaming device.

Q. Will you describe in more detail the three machines you call bingo machines?

A. These machines are quite common in the Lake County area and they constitute a device which is operated by means of actuating certain devices in the machine by means of the insertion of a coin, principally dimes, 34 and also by actuating a spring type plunger which propels five balls about a board upon which there are electrical contacts and wiring, and small holes into which the balls may drop and become permanently lodged, there for the duration of the game.

Q. Is it your opinion under Code and the regulations of the Internal Revenue laws a gaming tax applies to that type of machine?

By Mr. Herr: That is objected to, your Honor.

By The Court: Sustained.

By Mr. Barnett:

Q. Do you enforce the law applying the gaming tax against machines of that type when they are used for making pay-outs to winning players?

A. Yes, sir.

By Mr. Barnett: We have some machines out in the hall, your Honor, which I would like to have brought into the court room.

By The Court: Very well.

By Mr. Barnett: It may take a few minutes.

By The Court: We will take a short recess.

35 (Whereupon a short recess was taken.)

By Mr. Barnett: Will the Reporter please mark these machines?

(Thereupon said machines were marked Government's Exhibits 3, 4 and 5 for identification.)

By Mr. Barnett:

Q. Mr. Lonchar, before the recess you described for us three machines which you called bingo machines which were on the premises at Korpan's Landing on June 16, 1955. Will you step down, please, and examine Government's Exhibits for identification 3, 4 and 5 and tell us whether that is the type of machine which you were describing, those three machines.

(The witness left the witness stand and stood in front of the machines in question, Government's Exhibits 3, 4 and 5 for identification.)

By The Witness:

A. Yes, sir.

By Mr. Barnett: You may cross examine.

36 By Mr. Herr: I have no examination of this witness, your Honor.

By The Court: Very well.

By Mr. Barnett: You may step down, Mr. Lonchar.

(Witness excused.)

By Mr. Barnett: Mrs. Veit, will you take the stand, please?

ANNETTE L. VEIT, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Barnett:

Q. Will you state your full name, please?

A. Annette L. Veit.

By The Court: I can't hear you.

By The Witness: My name is Annette L. Veit.

By The Court: How do you spell your name?

By the Witness: V-e-i-t.

By Mr. Barnett:

Q. Is that Miss or Mrs.?

37 A. Mrs.

Q. Where do you live, Mrs. Veit?

A. 313 East Whitehall in Northlake, Illinois.

Q. Are you employed?

A. Yes, I am.

Q. Where are you employed?

A. Chicago North Western Railroad out in Proviso.

Q. What position do you hold there?

A. I am a clerk in the Agent's office.

Q. I see. Have you vacationed at a place called Korpans Landing in Fox Lake, Illinois?

A. Yes, I have.

Q. During the summer of 1955?

A. Yes, sir.

Q. Will you tell us what dates you were there?

A. I was there from July 30th until August 13.

Q. Of 1955?

A. Of 1955.

Q. What type establishment is that?

A. It is a very nice place. It has cottages; I mean year-round homes, not really cottages. There is a hotel, an establishment which consists of a small restaurant, hamburgers and such, but not dinners; there is a bar and a place you can come in and take your children and sit in the evening or come in by yourself if you like. It is an eating place.

Q. There are several cottages rented out?

A. Yes.

Q. And a main building?

A. I would call it a tavern and restaurant, a main building. Everybody comes in all day long.

Q. The entire place is called Korpan's Landing?

A. Yes.

Q. You say you vacationed up there during the time from July 30th until August 13, 1955?

A. Yes, sir.

Q. Do you know the defendant here, Walter Korpan?

A. Yes, sir, I do.

Q. Do you see him in the court room?

A. Yes, sir, he is sitting behind the machines there.

By Mr. Barnett: Let the record show the witness has identified the defendant.

By The Court: Yes.

39 By Mr. Barnett:

Q. Directing your attention to the evening of August 12, 1955 were you in the tavern of Korpan's Landing?

A. Yes, sir, I was.

Q. Did you see on display in the tavern such machines as Government's Exhibits 3, 4 and 5 for identification, which are here in front of you?

A. Yes, sir, I did.

Q. Did you play any of those machines?

A. Yes, sir, I did.

Q. Did you win any free games on those machines?

A. Yes, sir.

Q. How many free games did you win?

A. Twenty-one.

Q. You won twenty-one free games?

A. Altogether, yes, sir.

Q. Did you play off any of those free games?

A. Yes, sir, I did.

Q. Did you receive reimbursement in cash for any of the free games yourself?

A. Yes, sir, I did.

Q. How many?

A. Ten.

40 Q. How much did you receive?

A. One dollar.

Q. From whom did you receive it?

A. Mr. Korpan.

Q. During that evening did you see on the premises special agents Shannon and Kelly, if you know them by name?

A. Yes, sir, I did, but I didn't know it at the time.

By Mr. Barnett: You may cross examine.

Cross Examination

By Mr. Herr:

Q. Do you know what a slot machine is?

A. Yes, sir.

Q. A slot machine as you know it has cylinders that rotate after you pull a lever, is that right?

A. Yes, sir.

Q. You have nothing to do with the play of that machine? Is that right?

A. Yes.

Q. The result is entirely from chance?

A. Yes.

Q. In this machine you insert a coin and after 41 you insert a coin you pull out a lever and a ball is released, propelled by your own action?

A. Yes, sir.

Q. It is entirely different than a slot machine?

A. Yes, sir.

Q. When you get free games you can play off those games if you choose?

A. Yes, sir.

Q. If you don't choose and if the proprietor elects to give you the amount of those free games in cash you take the cash?

A. Yes, sir.

Q. In this instance you played off eleven free games?

A. Yes, sir.

Q. You also took a dollar in cash?

A. Yes.

Q. At the time you took this in cash isn't the situation that your father called you and asked you to come on. Do you remember that?

A. I took my money. I stayed a little longer. As a matter of fact when I went out I bought Mr. Korpan a free drink and had thirty cents in change.

42 My children had gone to a show, and I was out of the establishment almost an hour and a half before I returned again.

Q. At this time you took the dollar your father had called you, had he not?

A. No, sir, I don't think so.

Q. Have you ever played slot machines?

A. A long, long time ago, many, many years ago on a penny machine in the State of Iowa.

Q. That was entirely different from this machine?

A. Yes.

Q. On this machine you manipulate it yourself?

A. Yes, sir.

By Mr. Herr: No further questions.

Redirect Examination

By Mr. Barnett:

Q. What does your manipulation of this machine consist of after you put your money in?

A. The ball is automatically released and up into the track it runs on, and you pull the plunger and you can regulate how far back you want it, and if you are lucky and don't tilt the machine you can wiggle it back and forth.

Q. If you are lucky?

43 A. Yes.

Q. And after the ball starts do you have any further control?

A. Just by that shaking. It will tilt.

Q. It will tilt if you jiggle it?

A. Yes.

Q. You mentioned you thought Korpan's Landing was a very nice place?

A. I sure did.

Q. You vacationed there a number of times?

A. Yes, sir.

Q. The place is run as a nice place?

A. It certainly is.

Q. You would not try to hurt Mr. Korpan?

A. I cert~~ainly~~ly wouldn't.

By Mr. Barnett: That is all.

By Mr. Herr: No questions.

(Witness excused.)

By Mr. Barnett: Mr. Shannon, will you take the stand?

44 JOHN M. SHANNON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Barnett:

Q. Now, will you state your full name, please?

A. John M. Shannon.

Q. Where do you live, Mr. Shannon?

A. 1931 North Kilbourn Avenue, Chicago.

Q. What is your occupation?

A. Special agent, Intelligence Division, Internal Revenue Service.

Q. How long have you held that position?

A. Approximately three years.

Q. What are your duties in connection with that position?

A. Enforcement of the Internal Revenue laws and regulations.

Q. What educational background do you have?

A. Bachelor of Science, DePaul University in Chicago; Juris Doctor, DePaul University, College of Law, and I am a member of the Illinois Bar.

45 Q. Does the enforcement of the Federal Internal Revenue laws pertaining to the special occupational taxes on amusement devices and gaming devices fall within the purview of your duties?

A. Yes, sir.

Q. During the summer of 1955 did you have occasion to make some investigations pertaining to the special occupational tax pertaining to gaming devices?

A. Yes, sir.

Q. During the course of that investigation did you have occasion to visit the premises known as Korpan's Landing at Fox Lake, Illinois?

A. Yes, sir.

Q. When was that?

A. On August 12, 1955.

Q. On August 12, 1955?

A. Yes, sir.

Q. Did anybody accompany you there?

A. Special Agent Joseph Kelly.

Q. What time of the day or night did you go to Korpan's Landing?

A. Approximately 8:35 p. m.

Q. And when you went to Korpan's Landing what part of the premises did you go to?

46 A. We entered the tavern located on Korpan's Landing.

Q. Did you see on the premises the defendant in this case, Walter Korpan?

A. I did, sir.

Q. Can you point him out in the court room?

A. Yes, sir (indicating).

By Mr. Barnett: May the record show the witness has identified the defendant, Walter Korpan?

By The Court: Yes.

By Mr. Barnett:

Q. How long did you stay on the premises of Korpan's Landing in the tavern?

A. From approximately 8:36 in the evening until 2:35 a.m. on August 13th.

Q. Was the defendant Walter Korpan present on the premises throughout that time?

A. Yes, sir, he was.

Q. Did you have any conversation with him during the course of that evening?

A. Yes, sir, I did.

Q. Who was present during those conversations?

47 A. Special Agent Joseph Kelly was present at some of the conversations. Special Agent Joseph Kelly was there, and Mrs. Annette Veit was present at other conversations.

Q. Now, did you observe any coin-operated devices on the premises?

A. I did, sir. There were three bingo type machines, one bearing the name "Bally Hi-Fi;" another bearing the name "Bally Gaiety" and the other "Bally Variety."

Q. Are those names also on the machines which are Government's Exhibits 3, 4 and 5?

A. Yes, sir, they are identical in appearance to the machines I saw.

Q. They are identical in appearance to the machines you saw at Korpan's Landing?

A. Yes, sir.

Q. Did you play any of those machines?

A. I did, sir, from approximately 9:00 P.M. in the evening until about 11:30 in the evening of August 12. I played the Bally Gaiety machine for a major portion of the time, and played two or three games on the Hi-Fi machine.

Q. Did you have any conversations with the defendant Walter Korpan relating to the method of operation of 48 those machines?

A. I did, sir.

Q. Who was present at the conversation?

A. Special Agent Joseph Kelly was present.

Q. And yourself?

A. And myself.

Q. Will you relate what was said to you by Mr. Korpan and what you said to him if anything?

A. I asked Mr. Korpan what the objective was in playing the machines, and he said it was to get three, four or five lined up on the board at the back of the machine.

I asked him what the purpose of this would be, and he came around the bar and instructed me to drop a dime in the machine, which I did, and it lit up the first line of odds appearing on the machine.

Mr. Korpan explained if I got three of the numbers on the back of the board lit up in a row that the machine would register the number of replay games, and that I would win whatever amount, in cash, whatever amount was shown as replay games, using the numbers which appeared on the board, which indicated eighty cents, one dollar 49 twenty cents or twenty dollars, as the case might have been.

Q. What else transpired during that time?

By The Court: Will the Reporter reread that for me, please?

(Whereupon the answer was read by the Reporter as above recorded.)

By Mr. Barnett:

Q. Can you demonstrate that on one of the Government's exhibits?

A. Yes.

Q. Will you please step down and show us how that operates?

A. Mr. Korpan said—

Q. Now, will you step down here?

(The witness left the witness stand and stood in front of the machines, Government's Exhibits 3, 4 and 5.)

By Mr. Barnett:

Q. Is this machine in operation now?

A. Yes. Mr. Korpan instructed me to drop a dime in the machine, which I did. It activated the machines 50 and he then explained the objective of the game was to get three of the numbers appearing on this board.

Q. You are referring to the main board or the back board of the machine?

A. Yes.

Q. The main numbered squares, is that right?

A. Yes, sir.

To get three of the numbers lit. It was in a horizontal, diagonal, or vertical direction, and if I achieved this he would pay sixty cents, two dollars or nine dollars and sixty cents, which appear in the column on the back of the board, or that if—may I correct that instruction?

Q. Sure.

A. If I got three in a line he would pay sixty cents; if four were in a line he would pay two dollars, if five were in a line it would be \$9.60.

He then stated—

Q. Just a moment. Did he explain to you about the odds?

A. He then stated if I desired to increase the odds I could do so or take a chance of doing so by inserting more dimes in the machine, which I did in this fashion (demonstrating).

51 Q. What was the effect of that?

A. The effect of that, as he explained it, was to receive the payment of eighty cents, \$2.40 or \$10.00 for the accomplishment of getting three balls, four balls or five balls in a line.

Q. Did he make any further explanation of the machine?

A. He explained that by inserting more dimes into the machine I had the opportunity or possibility of increasing my odds or of achieving the magic pockets or magic lines that would increase the possibility of my winning on the machine.

Q. Did he describe to you how you could activate the balls which are placed or used in the play?

A. By pulling the plunger, you mean?

Q. Yes, did he explain that to you?

A. No, that portion he did not explain to me.

Q. Will you show us how you play a game on the machine?

A. By pulling the plunger back, releasing the plunger and permitting the ball to travel its course on the playing field of the board. If the ball enters a pocket it lights a corresponding number of the bingo chart on the back board.

52 Q. Complete your play on the machine.

A. (The witness operated the machine.)

Q. Now, the ball has landed in slot 25 which lights up number 25 on the back board, is that correct?

A. That is correct.

Q. Your objective further is to light up at least two more consecutive numbers?

A. That is right, sir, and in the position 25 is on the back board of this machine it would be necessary to light the numbers appearing above or below vertically, to the side, or horizontally. The diagonal play cannot be made here, in that the lines do not go diagonally.

Q. Go ahead and play out the rest of your balls.

A. (The witness operated the machine.)

Q. How many balls are there in operation, in the operation of this machine?

A. There are five balls in the operation of the normal game. At the completion of the game the player by inserting additional dimes has a chance of gaining additional balls. Additional balls may come into the machine or it may not.

Q. Will you describe what has happened since you 53 played the last ball?

A. The ball went into the pocket 8 on the playing field of the machine, lighting number 8 on the playing card on the back.

Q. In order to get a winner what is the next minimum thing you must do?

A. Place a ball in the number 6 hole on the playing field of the machine, which will light number 6 on the back board and score three numbers in a vertical row.

- Q. Go ahead and play it.
A. (The witness operated the machine.)
Q. What happened after the playing of that ball?
A. Nothing.
Q. You lit up number 4?
A. The ball fell on the number 4 pocket.
Q. Now, you have lit on the board numbers 3, 25, 8 and
4.
A. That's right, sir, but there is only one ball remaining in the machine, which means the only possibility of winning at the present time is by lighting the number 6 or number 7 key, either one of which would give a line of three on the bingo card in the back.
- 54 Q. Will you go ahead and play your last ball?
A. (The witness operated the machine.)
Q. You have not succeeded in getting a winner?
A. No, sir.
Q. Do you have an opportunity of getting any more balls?
A. I do, sir, by thrusting the button on the front of the machine and by dropping additional dimes into the machine, then I may or may not get additional balls.
Q. Was that explained to you by Mr. Korpan?
A. It was, sir.
Q. Will you see if you can get any additional balls?
A. (The witness operated the machine.)
I succeeded.
Q. All right. Will you play the extra ball?
A. (The witness operated the machine.)
Q. What did you get for your extra ball?
A. I got the possibility in two directions, to score a winner on the card by attempting to purchase a second ball and inserting another coin in the machine.
Q. Will you see if you can purchase an extra
55 ball.
A. (The witness operated the machine.)
Q. Now you have placed another dime in the machine, have you?
A. Yes, sir.
Q. What has been the effect of placing that dime in the machine?
A. I did not receive an extra ball. The machine merely lit the number 2 of the second one appearing on the face of it.

Q. What do you do now?

A. If I desire to continue trying for an extra ball I press a button again and place another dime in the machine.

Q. Will you try that?

A. (The witness operated the machine.)

Q. What happened as a result of your placing an extra dime in the machine?

A. I failed to get an extra ball. In order to attempt to get an extra ball again it would be necessary to drop another dime.

Q. I see. How often could that go on?

A. Indefinitely.

Q. Now, what degree of control would you exercise 56 or have you exercised over the ball while you have been playing the machine?

A. None. I could attempt to gauge the amount or the distance by which I pulled the plunger back in an attempt to have the ball start its downward path on the playing field at a desired location on top of the board.

However, in my demonstration I didn't make any such attempt, and normally don't, inasmuch as I have been unable to succeed in getting a ball to travel in any particular pattern.

Q. On this machine, Government's Exhibit 5 for identification, is there any means of controlling the ball after it has been set to play by the plunger?

A. There is no means of controlling the ball after that time.

Q. You may go back to the witness stand, Mr. Shannon.
(Thereupon the witness returned to the witness stand.)

Q. (Continuing) Now, during the course of the evening, Mr. Shannon, you played the machines which were 57 in Korpan's Landing and which bore what names?

A. The machines I played bore the names "Bally Gaiety" and "Bally Hi-Fi."

Q. The "Bally Gaiety" machine, is that identical in appearance with Government's Exhibit 5 for identification?

A. It is, sir.

Q. During the course of the evening did you win any games on the machines?

A. Yes, sir. At approximately 11:30 p.m. I won twelve replays on the machine, at which time I said to Mr. Korpan that I was going to discontinue playing the machine, that I

had lost enough money on it at that time. Mr. Korpan immediately went to the cash register and removed \$1.20 which he paid to me. He then came around from the bar and pressed the button on the machine, which removed the twelve replay games which had registered on the machine.

Q. What machine did you win that on?

A. The Bally Gaiety.

Q. That machine you have just been demonstrating?

A. It is identical to the machine I have just been demonstrating.

58 Q. Will you come back to this and show us where the winning games would show?

(The witness left the stand and stood in front of the machine, Government's Exhibit 5 for identification.)

A. Yes, sir, there is a replay register appearing in the upper lefthand corner of this machine, on the back.

Q. And that registers the number of games you are entitled to play free or receive money for, is that correct?

A. That is right, sir.

Q. What did Mr. Korpan do after you told him you wanted your money instead of playing for the games, what did he do to the machine?

A. He came to the machine, reached underneath the machine, pressed a button, and the games came off the machine.

Q. The games that were registered on the meter disappeared?

A. Yes, sir.

Q. And it went back to zero?

A. Yes, sir.

By Mr. Barrett: You may return to the witness stand.

(Thereupon the witness returned to the witness stand.)

By Mr. Barnett:

Q. Now, did you see any other people play the machines during the course of the evening?

A. Yes, sir. From approximately 8:40 till 9:00 p.m. I watched Annette Veit play the Bally Variety machine that was on the premises, and at 9:00 p.m. she stated to Walter Korpan that she was cashing in ten games, games that appeared on the replay register at that time.

Walter Korpan said O.K., went to the cash register, withdrew a dollar from it, which he then paid to Mrs. Veit.

Q. Did you have any further conversations with Mr. Korpan, the defendant?

A. I did, sir. At approximately 2:15 a.m. the morning of August 13 I identified myself to Mrs. Veit and Walter Korpan, and at that time I immediately advised Walter Korpan that he need not make any statement to me or furnish me with any information which might tend to incriminate him under the Federal laws, and that, anything he might say could be used against him at a later proceeding by the United States.

I asked him if he understood this and he said he understood it fully.

I asked him if he had received or if he recalled receiving the information from Special Agent Lonchar at approximately on or about June 15, 1955, concerning his obligation to purchase a coin-operated gaming device stamp prior to making pay-outs for replays won on coin-operated machines, and he said he recalled that and that he fully understood the information Mr. Lonchar had given him.

I asked him at the time Mr. Lonchar had spoken to him if he had been paying off on these machines, and he said yes, he had.

I asked him if he had been paying off ever since then and he said he had.

I then advised him a second time that he need not furnish me with any information which might tend to incriminate him, and he said he fully understood this.

I then asked him if he did not pay Mrs. Veit one dollar that evening for her winning ten replay games on the machines, and he said yes. He admitted making the payment.

I asked him if he did not also pay me \$1.20 for having won twelve replay games on the second of his machines, and he said yes, he did.

I asked him if he fully understood his obligation to purchase a coin-operated gaming device stamp prior to making such payments, and he said yes, he knew that.

I asked him if he made these payments of his own free will, or whether he was compelled by any other person to make the payments, and he said he made them himself of his own free will.

Q. Is that all?

A. May I refer to my notes?

Q. Have you repeated the conversation to us as fully as you can remember?

A. Yes, sir, substantially so, sir.

By Mr. Barnett: You may cross examine.

Cross Examination

By Mr. Herr:

Q. Mr. Shannon, in playing this game did you note 62 there is some element of skill involved in the amount of pressure you apply or the springiness you apply to the ball itself, to the cylinder?

A. It is possible to exercise a minimum amount of control in pulling the plunger back in the attempt to have the ball start its downward line in the playing field at a certain desired location.

Q. Have you finished your answer now?

A. Yes, sir.

Q. To the extent to which you use that plunger or the distance that you draw it back and release it will that control in a degree whether or not the ball will go towards one side of the downward face or another?

A. To that extent, possibly yes.

Q. Have you noticed that on the machine and at the place where the plunger sets there is a gauge which shows the markings across where you might hold the plunger and the ball before releasing it?

A. Yes, there is.

Q. And that is done with the purpose of either enlarging the distance the ball can travel or the speed at which it will travel and the area it will travel?

63 A. It may be for that purpose, sir.

Q. Did you try it?

A. Yes, sir, I did.

Q. In addition to that did you note that by slightly pushing the machine, not hard enough to cause a tilt, but slightly tilting it you can also control the ball?

A. No, sir, I did not have that experience. I did try it, sir.

Q. You did try it?

A. Yes, sir.

Q. But when the machine registers a number of replays the machine then automatically permits the replay?

A. Yes, sir.

Q. And you can use that replay?

A. Yes, sir.

Q. When you use it you can't redeem it?

A. That is correct.

Q. It is up to you whether you want to redeem it or not, and whether the owner of the instrument will repay it?

A. That is correct, sir.

Q. In this instance Mr. Korpan told you any games 64 you did not play he would redeem at ten cents a game?

A. Yes, sir.

Q. That is the amount you paid for a game?

A. That is the amount I paid to originally activate the play. For the play, as I paid the machine, I inserted between four and fifteen times before playing the game, each individually.

Q. I see. That would multiply the number of odds or the number of replays you would get?

A. It might, yes, sir; it might or might not.

Q. Thereafter you would put into play and motion and propel a particular pellet or ball for its course down that machine?

A. Yes, sir.

Q. And did you always apply the same pressure?

A. No, sir, I did it rather haphazardly after a fashion, shooting two or three balls at a time.

Q. You did not try to develop any particular control or skill over the movement of that ball?

A. I certainly did try to, sir, but I gave up.

Q. You gave up?

A. Yes, sir.

Q. But you have known people who have been quite 65 successful in controlling that?

A. No, sir, I have not known of any person being successful in controlling the ball.

Q. You have known them to be successful insofar as controlling the site of the surface the ball will travel?

A. Yes, sir, you can do that with a degree of success.

Q. You have that control?

A. Yes, sir.

Q. And you also have some little control by pushing the side of the machine when the ball is on its course?

A. No, sir, because the machine tilts.

Q. That is, if you push it too hard?

A. Yes, sir, if you push it too hard.

Q. In order to control it.

A. Yes.

By Mr. Herr: That is all, Mr. Shannon.

Redirect Examination

By Mr. Barnett:

Q. During the court of the evening when you were 66 out there how much money did you put into these machines?

A. Approximately fifteen dollars, I myself.

Q. What is the total amount of money or total amount of free plays you won?

A. Approximately thirty, sir.

Q. At ten cents a game that would be three dollars in money for you?

A. If I cashed them in.

Q. You played off twenty of them?

A. That is correct. No, I played off eighteen.

Q. And you cashed in for twelve?

A. Yes, sir.

By Mr. Barnett: That is all.

(Witness excused.)

By Mr. Barnett: Mr. Kay, will you take the stand.

GEORGE A. KAY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Barnett:

Q. Will you state your full name, please?

67 A. George A. Kay.

Q. Where do you live, Mr. Kay?

A. 25 North Holly Avenue.

Q. Where?

A. Holly Avenue.

Q. In what city or town?

A. Fox Lake, Illinois.

Q. What is your occupation?

A. I am a service man for Grant Novelty Company.

By Mr. Herr: I didn't hear that.

By The Witness: I am a service man for Grant Novelty Company.

By Mr. Barnett:

Q. What business is Grant Novelty Company engaged in?

A. In the operation of bingo machines.

Q. Such bingo machines as the Government has presented here as Government's Exhibits 3, 4 and 5 for identification?

A. Yes.

Q. What does the operation of these machines consist of, how does their organization work? They don't have all machines gathered in one spot, do they?

68 A. No, they are distributed between different taverns, resort areas, amusement houses.

Q. Were any of these machines of the Grant Novelty Company placed at Korpan's Landing?

A. Yes, sir.

Q. Do you know the defendant, Walter Korpan?

A. Yes, sir.

Q. Do you see him in the court room?

A. Yes, sir.

Q. Will you point him out, please?

A. The fellow in the blue suit.

By Mr. Barnett:

May the record show the witness has identified the defendant?

By The Court: Yes.

By Mr. Barnett:

Q. Now, how many spots does the Grant Novelty Company have, or locations in which they have these machines situated?

By Mr. Herr: I object to that as immaterial in this case.

By The Court: How many what?

By Mr. Barnett: How many locations does the Grant Novelty Company have these machines in?

69 By The Court: What is the materiality of that?

By Mr. Barnett: Well, I want to show the nature of this man's activity, how he went from place to place and collected money.

By The Court: Overruled.

By Mr. Barnett: You may answer.

By The Witness:

A. As far as locations, I would have to stop and think.
Pieces of equipment out I could be more definite on.

By Mr. Barnett:

Q. How many are out?

A. I would say approximately 42 to 44.

Q. Approximately how many location are these pieces
of equipment distributed between?

A. Approximately 30 to 33.

Q. 30 to 33?

Q. How many pieces of equipment were located at Kor-
pan's Landing?

A. Three, sir.

70 Q. Three. That is true of what period of time,
that you had three pieces of equipment at Korpan's
Landing?

A. Well, from the summer of '54 there were three pieces
in there until late in the fall, when we removed one piece.

Q. In the fall of 1954?

A. Yes, and in the spring of 1955 we installed one
other, so there were three in there in the summer of 1955.

Q. There were three machines there in the summer of
1955?

A. Yes, sir.

Q. As a service man what do you do?

A. I service and collect on them. Collection day is Mon-
day, and after that the rest of the week we take care of
any trouble that might occur in the machines, and if we
don't have any of that we have machines in the shop for
overhauling.

Q. Are you able to make your collections in one day?

A. Yes, sir.

Q. You go from spot to spot?

A. Yes, sir.

71 Q. Does anyone accompany you in your rounds?

A. Yes, sir.

Q. Who?

A. Mr. Techaus.

Q. Are his functions the same as yours are, with the
Grant Novelty Company?

A. Yes, sir.

Q. Now, when you go into a location to make your collections will you describe for us precisely what you do physically? You may demonstrate on these machines if it would be helpful.

A. When I go into a location I open the door and there is a meter reading. I take that down.

There is a meter reading on the cash can for the previous week. I remove the cash can and write the current meter reading above the prior one, and subtract the difference. I count the cash and take the difference between the two numbers, and reimburse Mr. Korpan the difference.

Q. That is, you reimburse Mr. Korpan or whoever the proprietor is for the difference?

A. Yes, sir.

Q. You say there is a meter inside?

A. Yes.

72 Q. Which on this machine, Government's Exhibit 5 for identification, now registers what, is it 5401?

A. Yes, sir.

Q. That meter is called a replay meter?

A. Yes, sir, that meter determines whether the replays are knocked off or whether they are replayed.

Q. I see. Now, when a player wins on a machine such as Government's Exhibit 5 for identification there is a meter reading on the face of the board that registers the number of plays he wins?

A. Yes, sir.

Q. If he plays those off is there any register of the replays on the meter inside of the machine?

A. No, sir, not if they are played off.

Q. If, instead of that he is reimbursed in cash or merchandise is there anything done to the machine by the proprietor to take off the face of the board those winning figures?

A. Yes, sir.

Q. What does he do?

A. It can be done in this manner, by pressing this button under here.

Q. Does that button—do you have a knock-off button?

73 A. No, sir. You can call it a cancellation button. It will cancel those, and reshow them on this one (indicating).

Q. After you have taken off the meter reading on that day you then write that on a piece of paper and replace it inside the machine?

A. Yes, sir.

By Mr. Barnett: You may go back to the stand now.

(Thereupon the witness returned to the witness stand.)

By Mr. Barnett:

Q. Now, did you visit Korpan's Landing to see these machines on the Mondays during the months of June, July and August of 1955?

A. Yes, sir.

Q. Did you make collections of the type you have described to us just now at Korpan's Landing on each of those Mondays?

A. Yes, sir.

Q. On each of those Mondays did you make any allowance to Mr. Korpan for replays that were registered on the replay meter within the machines?

74 A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Can you identify the machines that were in Korpan's Landing?

A. Yes, sir, there was a Bally Variety, a Bally Gaiety, and a Bally Hi-Fi.

Q. Such as these machines that are here in the court room in evidence now as Government's Exhibits 3, 4 and 5? No, I believe they are for identification.

A. Yes, sir.

By Mr. Barnett: You may cross examine.

By Mr. Herr: No questions.

By Mr. Barnett: You may step down, Mr. Kay.

(Witness excused.)

By Mr. Barnett: Mr. Ross, will you take the stand?

LOUIS V. ROSS, called as a witness on behalf of the Government having been first duly sworn, was examined and testified as follows:

By Mr. Barnett:

Q. Will you please state your full name?

A. Louis V. Ross.

By The Court: How do you spell your first name?

By The Witness: L-o-u-i-s.

By The Court: V?

By The Witness: Yes.

By The Court: Is that R-o-c-k?

By The Witness: No, it is Ross, R-o-s-s.

By Mr. Barnett:

Q. Where do you live, Mr. Ross?

A. 295 Garfield Avenue, Fox Lake, Illinois.

Q. What is your occupation?

A. General contractor.

Q. Do you have any other occupation also?

A. Yes, sir.

Q. What is that?

A. I am a village magistrate.

Q. Police magistrate?

A. That is right.

Q. Of the Village of Fox Lake?

A. That's right.

76 Q. Directing your attention to October 11, 1955 did you have occasion to visit the premises known as Korpan's Landing in Fox Lake, Illinois?

A. I did.

Q. On that evening?

A. Yes, sir.

Q. Were you accompanied by anyone?

A. Yes, sir.

Q. By whom were you accompanied?

A. Sergeant Wilkie of the Fox Lake police department.

Q. Anybody else?

A. Yes, sir.

Q. Who else?

A. Gordon, a policeman of Fox Lake.

Q. After you entered the premises of Korpan's Landing did you see Walter Korpan, the defendant in this case, on the premises?

A. I did.

Q. Do you see him in the court room now?

A. Yes, sir.

Q. Can you identify him?

A. The gentleman in the blue suit and the yellow tie.

77 By Mr. Barnett: May the record show the witness has identified the defendant?

By the Court: Yes.

By Mr. Barnett:

Q. Did you have a conversation with Mr. Korpan at that time and place?

A. I did.

By Mr. Herr: What was the date? I didn't get it.

By Mr. Barnett: October 11.

By Mr. Herr: I want to object to it. It is subsequent to the time in question.

By Mr. Barnett: It relates to the admissions pertaining back to the indictment, your Honor.

By the Court: Very well. Proceed.

By Mr. Barnett:

Q. Will you state what you said to Mr. Korpan and what Mr. Korpan said to you at that time and place?

A. I went in the tavern and I talked to Mr. Korpan and I asked him if he had purchased three gaming stamps. He stated that he had.

Q. Is that Federal gaming stamps?

78 A. Yes, sir.

Then I asked him why and he stated, "Because I had to," and "because I paid a woman one dollar."

I said, "I don't mean why. What type of device did you purchase the tax stamp for?" And he pointed to the three pin ball machines that are in this room at this time.

I asked him if these particular machines were used for gaming, and he stated, "Yes, sir."

I asked him if he knew I would have to confiscate the machines, and he said yes, so I had the machines picked up and brought to the village hall, and a summons was issued for his appearance in my court room on the 14th day of October at 7:00 p. m.

Q. On the 14th day of October at 7:00 p. m. did you have a further conversation with Mr. Korpan?

A. Yes, I did.

Q. Where did that conversation take place?

A. At the village hall in the Village of Fox Lake.

Q. Who was present?

79 A. The hearing was called for 7:00—for 8:00 p. m.

The mayor of the village was present, the witness, Sergeant Wilkie was present, they were there.

The case was called, the defendant was sworn in, the defendant pled guilty to the charge of gambling in the Village of Fox Lake.

Q. Did you have a conversation with him prior to the plea?

A. Yes, I did. I reminded him he was under oath and I asked him to state to me the conversation that we had on the previous evening when we were at his establishment.

He related to me that he bought a gaming stamp, and he continued the conversation or he repeated the conversation that we had had on the night in question, on the 11th.

Q. Now, can you identify Government's Exhibits 3, 4 and 5 for identification as the machines which you confiscated from Korpan's Landing?

A. Yes, sir, I can.

Q. Will you examine them, please, and show us how you identify them as those machines?

80. (The witness left the witness stand and stood in front of the machines, Government's Exhibits 3, 4 and 5 for identification.)

By the Witness:

A. In the process of removing the machines from Fox Lake there were certain marks put on by the machine being put on a truck.

Here is one, also on the side, and here (indicating), and also the stamps bearing the village license number 17.

By Mr. Barnett:

Q. Were they on the machines, and are they on the machines now?

A. Yes, up in this corner right here (indicating).

By Mr. Barnett: Will you take the stand again, please? (Thereupon the witness returned to the witness stand.)

By Mr. Barnett:

Q. When you visited Korpan's Landing on October 11, 1955 were these machines in operating condition?

A. Yes, sir, they were.

81 Q. Were they lit up?

A. The lights were up and they were stationed directly in front of the bar.

Q. Did you do anything to change the operation of the machines when you confiscated them?

A. No, sir, I did not.

By Mr. Barnett: Your Honor, I will offer in evidence as Government's Exhibits 3, 4 and 5, Government's Exhibits 3, 4 and 5 for identification.

By the Court: They may be received.

(Said machines, so offered and received in evidence, were marked Government's Exhibits 3, 4 and 5.)

By Mr. Barnett: You may cross examine.

Cross Examination

By Mr. Herr:

Q. You are the police magistrate in the Village of Fox Lake?

A. That is right.

Q. When did you first learn of the existence of these pin ball machines at Korpan's Landing?

82 A. I was notified earlier on the day of the 11th that gaming stamps were purchased for Korpan's Landing.

The mayor asked me to investigate that evening to find out the nature of the machine that the stamp was to be issued for.

Q. That it was issued for?

A. That's right.

Q. Do you know when the mayor got that information?

A. The mayor received the information from a radio report on, I believe it was, Station WKRS, Waukegan.

Q. On what date, the same date?

A. The 11th day of October.

Q. That was after Mr. Korpan had bought three gaming stamps on September 21, 1955?

A. That is right.

Q. And within less than three weeks thereafter, after buying gaming stamps, you removed those machines from his premises?

A. That is right.

Q. Prior to that time how long had you known of those pin ball machines being there?

83 A. I did not know the machines existed in Korpan's Landing at that time.

By Mr. Herr: I see. That is all.

Redirect Examination

By Mr. Barnett:

Q. Does the city or Village of Fox Lake license machines for amusement purposes?

A. Yes, sir, they do.

Q. How much do they charge per machine for the license?

A. The license fee for each machine is \$25.00.

Q. When you examined Government's Exhibits 3, 4 and 5 did you find evidence on those machines of licenses having been issued?

A. Yes, sir.

Q. By the Village of Fox Lake?

A. That is right.

Q. Appearing in the upper lefthand corner of each machine?

A. That is right.

Q. Are those licenses issued on machines that pay money?

By Mr. Herr: That is objected to.

By the Court: What is that question?

84 By Mr. Barnett: Are those licenses issued on machines that pay money?

By the Court: He may answer.

By the Witness:

A. License is issued for amusement only.

By Mr. Barnett:

Q. That is, for machines used for amusement purposes only, is that correct?

A. That is right.

Q. Not for machines that pay money?

A. That is right.

Q. If a machine entitles a person to receive money if they don't pay money out themselves, may amusement licenses be issued for them?

A. I beg your pardon!

Q. If the playing of the machines entitles a person to receive money or merchandise in any way, shape or form, rather than spitting the money out itself, may the license be issued?

A. No.

By Mr. Barnett: That is all.

Recross Examination

By Mr. Herr:

Q. Have you got a copy of the ordinance relating 85 to that license?

A. I believe we have.

Q. You don't have it with you?

A. No, sir.

Q. Can you state it?

A. No, sir, I cannot.

By Mr. Herr: No further questions.

By Mr. Barnett: You may step down.

(Witness excused.)

ALBERT F. HOFFMEIER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Barnett:

Q. Would you please state your full name?

A. Hoffmeier, Albert F. Hoffmeier.

By the Court: How is your last name spelled?

By the Witness: H-o-f-f-m-e-i-e-r.

By Mr. Barnett:

Q. Where do you live, Mr. Hoffmeier?

A. Fox Lake, Illinois.

86 Q. And what is your occupation?

A. I am an automobile parts jobber.

Q. Do you have any other occupation?

A. I am president of the Village.

Q. You are president of the Village of Fox Lake?

A. Right.

Q. Directing your attention to the evening of October 14, 1955, were you present at a hearing in the village hall in Fox Lake at which the defendant, Walter Korpan, appeared?

A. Representing myself as liquor commissioner, yes.

Q. You also hold the title of liquor commissioner?

A. All presidents do, yes, sir.

Q. Will you state who was present and what occurred at that time and place?

A. There was Mr. Gordon; the police magistrate, Louis Ross; and Sergeant Wilkie.

Q. What occurred?

A. We had an investigation on gambling within the city limits, the village limits.

Q. And was there a conversation there?

A. There was a conversation. The magistrate asked Mr. Korpan if he had gambling on the machines, 87 and he said he had gambled at the time the Government men were there but he had not gambled before or after.

- Q. That is what he said?
- A. Yes, that they were not used for that purpose.
- Q. Only on the night the Government man was there?
- A. That is what he told the magistrate.
- Q. After that proceedings was over what happened to the machines?
- A. They were turned over to me to dispose of.
- Q. Have they been in your custody?
- A. They have been in my custody until you picked them up.
- Q. Was there anything done to change the operation of the machines while they were in your custody?
- A. No, sir, nothing.
- By Mr. Barnett: I have no further questions.
- By Mr. Herr: No questions.
(Witness excused.)

88 ALVIN J. GOTTLIEB, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Barnett:

- Q. Now, will you state your full name, please?
- A. Alvin J. Gottlieb, G-o-t-t-l-i-e-b.
- Q. And your occupation?
- A. Treasurer and advertising manager for D. Gottlieb & Company.
- Q. For D. Gottlieb Company?
- A. Yes, sir.
- Q. Who is D. Gottlieb?
- A. He is a manufacturer of coin machine devices.
- Q. Does the letter D refer to a man's name?
- A. It is the name of the corporation. It is also the initial.
- Q. Of whom?
- A. The initials of my mother and my father and my son.
- Q. Your father is in this business also?
- A. Yes, sir.
- Q. Now, how long have you been employed by The
- 89 Gottlieb Corporation?
- A. Eight years.

Q. In what capacity?

A. Primarily as advertising manager, and originally I learned the business in the experimental and engineering department.

Q. I see.

A. For about a year.

Q. What educational background do you have?

A. A year and a half of electrical engineering.

Q. What business is the Gottlieb Corporation in?

A. They manufacture coin-operated amusement devices.

Q. They manufacture coin-operated amusement devices?

A. Yes, sir.

Q. What are the names of some of those devices? Are there different types of coin-operated amusement devices?

A. Yes, sir, many.

Q. What other types does Gottlieb Corporation manufacture?

A. At one time the corporation made a grip testing device, and they made a shuffle board type of coin-operated machine, and basically pin ball machines, amusement pin ball machines.

Q. Can you describe for us the operation of the amusement pin ball machine?

A. Yes, sir. The amusement pin ball machine is played by the insertion of coins upon which the player is presented with the opportunity of playing five times on the play board of the machine.

He inserts the coin and the balls are released to the ball mechanism which elevates the ball, whereupon the player pulls back the plunger and releases it, which propels the ball out on the playing field.

It then bounces from various contacts, which score points or high score, or whatever it may be.

On the playing field there are what is called flippers in the trade or electrically controlled devices controlled by the player or by buttons on the side of the machine.

Then by the proper coordination and use of these buttons the player is able to flip the ball back, the idea being 91 to achieve a high score which will award free plays.

Q. Now, are you familiar with the machines, not the identical machines but the type of machines represented here by Government's Exhibits 3, 4 and 5?

A. Yes, sir.

Q. Are you familiar with the manner in which they are constructed?

A. Yes, sir, I am.

Q. Are you familiar with the various mechanisms and how they operate?

A. Well, I have a limited knowledge of the mechanism.

Q. Are these machines which are here in evidence as Government's Exhibits 3, 4 and 5 the amusement type pin ball machines?

A. Amusement type pin ball machines?

Q. Yes.

A. That is an opinion.

Q. Will you please state your opinion?

A. Yes, on an opinion basis, sir, some people consider gambling an amusement.

By Mr. Herr: I move that answer be stricken.

92 By Mr. Barnett:

Q. Are these machines which are here in evidence as Government's Exhibits 3, 4 and 5 the type of amusement pin ball machines that you have described previously?

A. No, sir, they are not.

Q. They are not?

A. No, sir.

Q. Will you step down here and show us how these machines operate and show us what is the prime difference between Government's Exhibit 5, for example, and an amusement type pin ball machine.

(Thereupon the witness left the stand and stood in front of the machine, Government's Exhibit 5.)

By The Witness:

A. The major difference between this type of machine and our amusement type pin ball machine lies in the predominance of skill in the operation of our machine.

After the ball comes down the playing field he can, by skill and coordination, maneuver the ball back up the playing field again for higher scores.

93 Our machines also have high scores on them, where the score is being continuously added up and totaled throughout the time of the play.

The scores range from hundreds up into thousands, ten thousands or millions, et cetera, whereas the main objective of these machines is to—

By Mr. Herr: Wait a minute. That I will object to.

By The Court: What is that?

By Mr. Herr: He was about to state his conclusion on some type of machine. He said the main objective of this machine is—and I objected.

The main objective is as it is depicted there.

By The Court: He may state. He ought to be an expert on it.

By The Witness:

A. (Continuing) The main objective is to shoot the balls into the pockets and line up the various combinations and win free plays on the meters indicated up in the corner.

94 By Mr. Barnett:

Q. Now, on the amusement type machines is there a meter up in the corner which registers free plays?

A. Yes, there is.

Q. On the amusement type machine is there also a meter inside the machine which registers the replays?

A. No, sir, there is not.

Q. Is there a button which discharges the replays from the top of the machines and records them someplace inside the machine, on the amusement type machine?

A. No, there is not.

Q. Now, will you tell us how much money you can put in this machine, Government's Exhibit 5, in order to play one game?

A. I don't quite understand what you mean.

You can insert one coin and play an entire game.

Q. How many more coins may you insert? Is there a limit on the number of coins you may insert?

A. No.

Q. To play one game?

95 A. No, there is no limit.

Q. How much will the machine hold?

A. I have no idea.

Q. On the amusement type pin ball machines is there any limit on the number of nickels or dimes that may be inserted in order to play one game?

A. There is a limit in that machines are so made they, upon insertion of the first coin the scoring device is reset, whereupon if any additional coins are inserted absolutely

nothing else happens except the coin stays inside the machine.

By Mr. Barnett: Will you return to the stand?

(Thereupon the witness returned to the witness stand.)

By Mr. Barnett:

Q. In other words, there is no benefit to inserting additional coins?

A. No, sir.

Q. It doesn't increase the odds?

A. No, sir.

Q. On this machine the odds do increase?

A. Yes, sir.

Q. Is that a fact, that they always increase?

96 A. No, sir, they don't change every time.

Q. They may increase or they may not?

A. That is correct.

Q. Now, in the operation or manipulation of these machines what degree of control is exercised by the player of the machine? I am referring now to Government's Exhibit 5.

A. Well, the use of the plunger will enable a player to exert an amount of skill on placing the ball somewhere in the vicinity of the desired hole in the four portions of the board, whereas further down on the board the degree of skill in bumping the machine depends on how sensitive the tilting device is.

Q. In other words, if you bump it a little and the machine is tight, as they say, it will tilt quickly?

A. Yes, sir.

Q. And if the machine is loose it may not tilt?

A. Yes, sir.

Q. Is any other control that may be exercised over that ball possible?

A. Outside of the use of the bumping, I don't
97 think so, sir.

Q. Is there any control exercised by the mechanism within the back board of the machine which limits the opportunities of the player's success?

A. I believe you mean the point at which the player wins, or do you mean—

Q. The number of games he may win. Can you open up the back of that machine and show us the mechanism?

A. I think so. Do you have a key?

(Thereupon the witness left the stand and stood in front of the machine, Government's Exhibit 5.)

By Mr. Barnett:

Q. Would you be able to explain this better with the machine in operation? We will turn the machine around.

A. Yes. Well, it wouldn't make much difference unless you could see it quite closely.

Q. I see. Will you explain to us, Mr. Gottlieb, how the machine operates with respect to the search disc and with respect to the reflex unit and with respect to these devices up here that I don't know the name of, ball detection relay, I think they are called.

A. Well, the search mechanism is a wire directly to the holes on the playing field, and that is used to determine whether there is a winning combination made or not.

Each ball that is dropped into a hole, there is a switch under that hole, and that switch is wired to this mechanism back here.

This mechanism I think runs continuously, but I am not sure, and at any time throughout the game I think after a certain number of games are shot this mechanism starts operating, and it is searching over the various combinations on the play field in order to determine if a win has been made.

Is that all?

Q. No, go on and tell us what happens to this device up here which appears to be captioned "Ball detection relay."

A. That is not a ball detection relay, that is a mechanism which determines whether the player will receive higher odds or additional balls as he deposits the coin.

Q. How does it go about determining that?

A. This motor on the side turns the discs and on the insertion of the coin these tooth gears are released and they rotate around the mechanical components.

At certain times ratchets engage these gears, and the mechanism stops, and I believe another lever drops or trips, and at that time if a combination is made in here

which determines whether the player will get additional balls or higher odds, then another mechanism inside the machine sets those lights across there to indicate that.

Q. I see. Does anything happen in connection with—what do you call these (indicating)?

A. Gears.

Q. Does anything happen with respect to these gears in the event a large winner has been gained on the machine, with respect to the next game or the next player? In other words, is there any control exercised by those devices other than the number of large winners?

A. Yes, sir, there is a device known as a reflex unit inside the machine which is a compensator and more 100 or less balances out the high winnings as against the small, winnings, and enables the machines to compensate for people winning a tremendous amount of free games on the machine, and more or less balances out the number of games won during a play period.

By The Court: Can that device be adjusted?

By The Witness: Sir?

By The Court: Can that device be adjusted?

By The Witness: I don't think so. I think that is a set gear arrangement that runs all the time.

By The Court: Can it be readjusted?

By The Witness: Well, I imagine so. Yes, sir.

By The Court: What is it set for now?

By The Witness: Well, as far as the adjustments are concerned I think it can only be adjusted more than—well, that is something else.

I think what can be done is to adjust them to be set so they could leave it pay off more all the time, if 101 they want to, by disconnecting it.

By The Court: If it were paying too much how could it be adjusted?

By The Witness: Well, by disconnecting the wires on the unit up here to prevent the odds from going up.

Is that all?

By Mr. Barnett:

Q. Now, with respect to tilting the machine, if a player attempts to exercise some control over the ball after it falls down into the playing field, by moving the machine around, you said earlier the machine might tilt?

A. Yes, sir.

Q. What effect occurs on the machine in the event the tilting occurs?

A. The entire machine turns off and the light comes on indicating the machine has been tilted, and the game is over from that point.

Q. Do you get your money back?

A. No, sir.

By Mr. Barnett: You may take the stand.

(Thereupon the witness returned to the witness stand.)

102 By Mr. Barnett:

Q. In your opinion as an expert does chance or skill play a pertinent part in winning on these machines?

By Mr. Herr: That is objected to. It is not a question of which is pertinent.

By Mr. Barnett: I can ask that question, can't I?

By The Court: He may answer.

By The Witness:

A. Well, the chances of winning on it are predominantly by chance.

By Mr. Barnett: You may examine.

Cross Examination

By Mr. Herr:

Q. Is there any element of skill involved?

A. Yes, sir.

By Mr. Herr: That is all.

Redirect Examination

By Mr. Barnett:

Q. Is the element of skill involved, is that what you described to us as being the operation of the lever 103 and plunger?

A. Yes, sir.

Q. And the nudging of the machine so it may tilt?

A. The idea is to try to bump the machine slightly to push the ball up to a high pocket.

By The Court: But if you bump too hard?

By The Witness: Then the machine tilts.

By The Court: And you have lost your money?

By The Witness: Yes, sir, all circuits are disconnected.

By Mr. Barnett: That is all. You may step down, Mr. Gotlieb.

(Witness excused.)

MINA SCHERWAT, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Barnett:

Q. Would you state your full name, please?

104 A. Mrs. Mina Scherwat.

By The Court: Your last name, please?

By The Witness: S-c-h-e-r-w-a-t.

By Mr. Barnett:

Q. Where do you live, Mrs. Scherwat?

A. Grayslake, Illinois.

Q. What is your occupation?

A. I am assistant chief to the control accounts of the Director of Internal Revenue.

Q. Are payments on taxes receiv in your office?

A. Yes, sir.

Q. Including Lake County, Illinois?

A. They are received in the cashier's division.

Q. I see. Have you had occasion this morning to search the records of the cashier's office?

A. Yes, sir, I did.

Q. To find out whether or not a payment for a coin-operated gaming device stamp was made by Mr. Walter Korpan on or about August 12, 1955 for the fiscal year 1956?

A. There was a payment made on September 21st.

Q. At the time he filed the return?

A. On the gaming device.

By The Court: What was that date?

105 By The Witness: September 21, 1955.

By Mr. Barnett:

Q. Was there any payment made prior to September 21, 1955?

A. Not that I could locate this morning.

Mr. Barnett: That is all.

Cross Examination

By Mr. Herr:

Q. That payment was \$250.00 per machine?

A. Be~~r~~ pardon?

Q. That payment was \$250.00 for three machines, \$250.00 each?

A. Yes, sir, for three machines.

Q. The amount of the payment then was \$750.00, Mrs. Scherwat?

A. Yes, for three machines, \$250.00 apiece.

Q. What is that \$75.00 on there?

A. That is the penalty.

Q. I see.

A. That is for the late filing, the late payment.

Q. In other words, he paid \$825.00?

A. \$750.00 for the machines and \$75.00 for the penalty.

106 By Mr. Herr: I see. That is all, Mrs. Scherwat.
(Witness excused.)

By Mr. Barnett: The Government rests, Your Honor.
And Thereupon the Government Rested Its Case in Chief.

By Mr. Herr: Now, if the Court please, the defendant moves for an acquittal in that there has been no offense shown violative of the Act averred to have been violated by the terms of the indictment.

By The Court: Are you going to put in any evidence?

By Mr. Herr: Only as to the mechanism of the machine, your Honor.

By the Court: Put it in and let's get it over with.

By Mr. Herr: All right, your Honor.

107 And Thereupon The Defendant, To Maintain The Issues On His Behalf, Introduced The Following Evidence To Wit:

ROBERT H. BREITHER, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Herr:

Q. Will you state your name, please?

A. Robert H. Breither.

Q. Spell the last name.

A. B-r-e-i-t-h-e-r.

By The Court: Spell that again.

By The Witness: B-r-e-i-t-h-e-r.

By Mr. Herr:

Q. Where do you live?

A. 1461 Henry Avenue, DesPlaines, Illinois.

Q. What is your business, occupation or profession?

A. I am an engineer for the Lion Manufacturing Corporation and the Bally Manufacturing Company.

108 Q. How long have you been with that firm or with those firms?

A. Just short of 24 years. In January it will be 24 years.

Q. Are you acquainted with the three pin ball machines now in evidence in this proceedings?

A. Yes, sir.

Q. And are you acquainted with their mechanism and construction?

A. Yes, sir.

Q. Will you describe the machines, each of the machines separately?

By The Witness: May I step down, your Honor?

By The Court: Yes.

By Mr. Herr:

Q. Before you do that I would like to ask you one question: What are your duties in connection with your employment for these firms?

A. I do some design work, some consulting work, and also I teach mechanics and service men all over the country in operating and servicing of these machines, games.

Q. You are acquainted with the manner in which 109 they operate?

A. Yes.

Q. And how they are constructed?

A. Yes, sir.

Q. Now, will you please describe to the Court, using the machines so far as is necessary, the mechanism, construction and operation of these machines.

By The Court: I think I will have to ask you to recess at this time until 2:00 o'clock.

May I ask how much time you expect to take?

By Mr. Herr: I have just this witness.

By The Court: I know, but I don't know whether that is an hour or two hours or what.

By Mr. Herr: I shouldn't imagine more than half an hour.

By The Witness: It depends on what detail you want. In service school it takes a couple of hours.

By Mr. Barnett: How long?

By Mr. Herr: I don't propose to go into that.

110 By The Court: How long do you gentlemen expect to argue?

By Mr. Herr: If the Court would permit me, I would like to submit a written memorandum and brief.

By The Court: How much time do you want?

By Mr. Herr: Ten days.

By The Court: Very well. File a brief.

2:00 o'clock.

(Whereupon a recess was taken in the above-entitled cause to 2:00 o'clock p.m. of the same day, Tuesday, October 25, 1955.)

111:

IN THE DISTRICT COURT OF THE UNITED STATES

* * * (Caption—No. 55 CR 486) * *

Chicago, Illinois,
Tuesday, October 25, 1955,
2:00 o'clock p.m.

Court convened pursuant to recess.

Present:

Mr. Barnett

Mr. Herr

And thereupon the following further proceedings were had herein:—

By The Clerk: Case on trial, 55 CR 486, United States vs. Korpan.

By The Court: Proceed.

ROBERT H. BREITHER, called as a witness on behalf of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

112 *Direct Examination (Ctd.)*

By Mr. Herr:

By Mr. Herr: I will withdraw the question I asked just before adjournment at noon.

By Mr. Herr:

Q. I believe I forgot to ask you this preliminary-wise. Does the Lion Manufacturing Company or the Bally Manufacturing Company manufacture machines known as Bally Gaiety, Bally Hi-Fi, and Bally Variety?

A. They did.

Q. And the exhibits in evidence, Government's Exhibits 3, 4 and 5 being Bally Hi-Fi, Gaiety and Variety machines, who were those manufactured by?

A. Bally Manufacturing Company.

Q. And that is the manufacturer you are associated with?

A. Yes.

Q. You are acquainted with the operation of that machine?

A. Yes.

Q. Will you explain in detail the construction and operation of that machine?

113 By The Witness: May I have the Court's permission to step down there?

By The Court: Yes.

By Mr. Herr:

Q. Take the Exhibit 3 for example.

A. These games are essentially the same. They are equipped with and constructed with 25 holes in the play board. A complete game would be five balls shot out on the play field and pocketed at some position in the play board.

The scoring involved is a sequence type scoring in this respect, that to score replays you must shoot or light a series of three numbers in a vertical, horizontal or diagonal

line. For instance, by insertion of a coin a player conditions the game for play. Automatically the ball is brought up before the ball shooter. The player shoots this ball by the use of the ball shooter, or what we call in the trade a ball shooter.

Its construction features are such that we have designed the knob of the shooter with a very small amount of friction surface for the fingers so as to give a maximum amount of sensitivity to releasing the plunger. The 114 end of the plunger is equipped with a rubber rebound tip. This same plunger is nestled inside a ball guide plate which is calibrated with six or seven scored lines which allow the player to gauge the intensity of his shots. The purpose of that, of course, would be that if the player needs any particular hole on the right side of the field, depending upon the style of play he uses, he will either roll the ball right directly out of the gate onto the play field and come onto the right side, or he will shoot directly into the gate with the rebound with just enough force to miss the gate on the return shot and come down the right side. The same, of course, would be true in reverse procedure if he wants to come down the left side of the play field.

I said in scoring it is a sequence type scoring. Three or four lights in a row must be lit either horizontally, vertically, or diagonally. As he shoots one or two balls and they lodge in certain pockets, any one of the 25 pockets of the play field, he now has a pattern by which he will use his maximum skill. An example of that would be, for example, supporting the player lights number 9 and 115 shoots again and he lights number 12. Now, here

again a player is definitely going to use his skill in gauging his shot because it calls for a number 2 to score replays. Definitely knowing anything about the game, he is not going to come down the right side; he is going to come down here to the left side to aim for the number 2 hole.

Now, he gauges his shots and he has this calibration to guide him. He also employs additional skills which he has developed and which have been incorporated into this game. We call it nudging. These legs which support the housing or cabinet are so constructed that there is give in the cabinet and it will allow the whole cabinet to hunch

forward, sideward or toward the player. He may do this either by pounding the left side or the front side or the right side of the front rail.

At the time a ball contacts any one of these posts—there are 35 to 45 posts equipped with rubber rings. If his shot comes in here and he needs to be off to the left or he has to go off to the right he sometimes can nudge the ball 116 contacting the rubber ring. Therefore, he increases the rebound and either projects the ball over to the left or to the right. He cushions this rebound in reverse by contracting on the cabinet in this manner (indicating).

This game also has—well, one gentleman referred to it as a flipper. This game is equipped to allow the player to use the whole play field as nudging surface. I believe it was mentioned that flipper buttons are used. The same buttons on this game allow the board to shift forward at the time you want the ball to rebound either to the right or left.

Q. There are buttons on both sides?

A. On either the right or left side. Both operate. The whole body will move forward.

By Mr. Barnett: I want to be sure the record shows the witness is referring to Government's Exhibit 3 rather than Government's Exhibits 4 or 5.

By Mr. Herr: I think that is what the witness said he was speaking of.

By Mr. Herr:

Q. Will you proceed, please?

117 A. In other words, we have established that the ball shooter, that its construction is such that it will aid the player to use the maximum amount of skill. It has the calibration. It has the jumbo flipper which can propel the play field forward. It has the rubber rebound posts which are used in conjunction with this nudging either to the right or left. For a faster ball rolling down the play field the reverse is now employed, where they pull the game toward them and cushion the rebound.

The scoring, as I mentioned, is the sequence type scoring. Three lights or more in a given line must be lit to score replays. All the skill features that I have mentioned here are employed by players all over the country where I have

had occasion to observe. I have also observed that the skill varies according to the part of the country. In some sections the players are more skillful than others.

There are other game features on the back board, that are shown on the back board of this game. For example, a supercard is shown and that supercard is shown 118 on the righthand side of the back glass.

These are additional ways to score replays. The standard or primary way is three numbers in a given line, four numbers or five numbers in a given line. Three numbers rate a certain number of replays. Four numbers in line rate a certain number of replays, and five rate a certain number of replays.

Additional plays on here, of course, can bring in any particular game feature listed on the back glass, be it this game, that game, or Exhibit 5.

As far as skill is concerned I believe I have covered everything. If your Honor will just let me, I will check to see if I covered everything.

Also I omitted—this ties in with the nudging that I mentioned before. I mentioned the nudging in connection with getting a ball in any one of the 25 pockets. The play board is so equipped that at the lower right and lower left-hand corners of the play board there are two buttons which illuminate, and when a ball rolls over these buttons numbers 2, 5 and 8 are put onto the board automatically. Now,

my reason for mentioning that again is that the nudging or hunching or bumping, or if you use this jumbo flipper feature or anything employing your skill, is to keep a ball, when it gets down to this area on the play field, either to the left or right to obtain 5, 2 and 8. In other words, that is the equivalent of dropping three balls in pockets numbers 2, 5 and 8.

Q. Will you explain the construction of the legs and what their purpose is?

A. As I mentioned before, naturally I think the Court realizes the supports for the game could be designed such that they are reasonably or practically 99 per cent rigid, but the legs are left in this manner or are designed or manufactured in this manner so we can get a maximum amount of sway in this cabinet when the player is using this nudging feature. I would like to call the Court's attention to the fact that all three of these games when examined will show wear marks on the right and lefthand sides of the

front rail, which is only the result of nudging because the ordinary player will assume and use that feature, and use it to his advantage.

Q. . Can you nudge without tilting?

120 A. Yes, you can nudge without tilting.

Br. Mr. Herr: You may take the witness stand, Mr. Breither.

(Thereupon the witness returned to the witness stand.)

By Mr. Herr:

Q. You are acquainted with pin ball machines generally, aren't you?

A. Yes, sir.

Q. Are you acquainted with slot machines?

A. Yes.

Q. Will you tell us what is the intrinsic characteristics of a slot machine, or what are the intrinsic characteristics?

A. Playwise and mechanically?

Q. Yes.

A. In a slot machine it is a mechanism either totally mechanical or part mechanical which has three reels in it or drums. On these drums are maybe six, seven or eight symbols, depending on the type of slot machine. The purpose and use of the slot machine is to insert a coin, pull a handle—and to what degree the handle is pulled has no

factor at all—to spin the reels. The reels will spin 121 and locate one at a time, the first one, the second one

and then the third one. At any time that symbols as set up on the machine and printed thereon are symbols of two of a kind or three of a kind lined up opposite the opening or glass portion at the front end of the game, cash is returned automatically out of this machine to the tune of anything from five to twenty.

Q. Has the player any part in controlling the mechanism or operation of that machine?

A. Absolutely not, none whatsoever.

Q. In the operation of a pin ball machine has the player a part in its operation?

A. Yes, he definitely has because, as I mentioned before, part of my duties are to travel around the country and instruct men in how to read circuits because of the complexity of the circuits; but at the same time my duties require observing players all over the country and it is a known fact that players vary in their proficiency.

For example, just to make it short, if one person in this room were given X numbers of coins to play the 122 game, anyone of these exhibits, and another person were given the same amount of coins to play the game the result would be different each time until one player develops sufficient skill to catch up to the better player.

By Mr. Herr: You may inquire of the witness.

Cross Examination.

By Mr. Barnett:

Q. How long have you been employed by the Bally Manufacturing Company, Mr. Breither?

A. It will be 24 years in January.

Q. During that time did the Bally Manufacturing Company ever manufacture any equipment which has since been banned from shipment in interstate commerce as gambling equipment?

By Mr. Herr: That is objected to, your Honor.

By The Court: Sustained.

By Mr. Barnett:

Q. During the course of your employment by the Bally Manufacturing Company you have been acquainted, have you not, with the intricate details of the manufacture 123 of what commonly are called one-arm bandits?

A. Fairly well so, yes, sir.

Q. You have described the manner in which a slot machine, as counsel has called it, is operated by the pulling down of a lever. Is that what is called the one-arm bandit?

A. Yes, sir.

Q. The reels on that slot machine present the winning or losing combination by the operation of chance, do they not?

A. Would you repeat that, please?

Q. The reels that spin on the slot machine or the one-arm bandit type machine present a winning or losing combination by operation of the element of chance, do they not?

A. By the stopping of it, yes, sir.

Q. Will you step down here and look at Government's Exhibit 5: look at the back board: and tell us the name of this unit that I have my finger on.

A. Mixing and spotting unit.

Q. That is called the mixer and spotting unit?

A. Yes.

Q. Is there something called the spinner unit on the machine?

124 A. Not as we term it. There is nothing labeled in here as a spinner unit.

Q. Do you know what I mean when I use the term spinner?

A. I have a hunch you may mean the search index.

Q. I may mean the search index?

A. I am not sure.

Q. What is the reflex unit on the machine? Where is that located?

A. That is the reflex unit down here (Indicating).

Q. What is the purpose of the reflex unit?

A. Well, we have found—and this is again field research, you can put it under that heading—that at no time have we been successful in marketing our games and having them appear to be interesting enough to players for a sustained length of time unless we used this unit.

Q. Is it possible to tell us the purpose of the unit?

A. I am going right into it. As you see this back board again, as I mentioned before—

Q. Now you are pointing to Government's Exhibit 4.

125 A. Yes. As you see this back board it has various game features on it. It has more than one game feature on it. In other words, to make it interesting to the player we use the reflex unit to vary this condition. Electrical and mechanical units are not perfect and they can go into what we call cycling in the trade, as anyone in the mechanical business knows. When cycling occurs—let's for purposes of illustration say it favors this side, these game features. With the reflex unit it will vary it around so the player gets the benefit of everything we claim on here. He score replays on any kind of game shown on here. That is a short explanation of it, but it can be proven.

Q. After a player makes several large winners does the reflex unit automatically reduce the chances of a winner playing winning numbers in the next sequence of chance?

A. In one game?

Q. No. Say the player has won a series of games, that the register on the back board shows a hundred games. Will the reflex unit reduce the opportunity of the player to win succeeding games?

126 A. It may shift. It won't reduce it. It will shift it, reportion it.

Q. Isn't it a fact that it will eliminate certain winning combinations by the number of games that appear on the register above?

A. I am afraid that I can't admit that. That is not a fact.

Q. It is not a fact?

A. No, sir.

Q. What does the reflex unit do with respect to reducing the opportunity to win?

A. With relation to game score?

Q. Yes.

•A. I mentioned if—for example, let's make it the direct play winner of 16 replays. At the time 16 replays are being scored over here, on the register over here, the reflex unit is operating the same number of steps. In other words with the number of 16 scores, 16 is the number of steps that the reflex unit is operated. It has now moved very slowly, but if sufficient number of replays were scored it would begin to shift from this feature and favor that, and add this. It just scrambles it around; it just re-
127 proportions, but there is not a total cut-out or reduction in the machine.

Q. You say it scrambles, but it does not prevent those combinations from coming up?

A. Prevent?

Q. Yes.

A. No, sir.

Q. What is the meaning of shifting the field of play to the other side?

A. Well, let's reword it. You play 100 games. You have 100 games up here. You walk up here and you play those games. All the while you are playing the game this unit is either moving, for purpose of explanation, to the left or to the right. If it is moving to the left it is giving you the amount of everything that you have here, the maximum amount of everything you have on this back board. As it moves to the right it may take, for purposes of explanation again, it may take two per cent off of here and put it down here or here; but at no time is there a total reduction. It is just a shifting.

Q. It is not a total reduction, but it does limit the 128 field of opportunity for you, does it not?

A. It changes your opportunity. It shifts it from one game feature to another game feature.

Q. In the design and engineer of these games are provisions made to tighten up the payoff percentage at the discretion of the operator or owner?

A. I don't believe I follow you on "pay-off percentage."

Q. By pay-off procedure I mean the opportunity for winning.

A. Scoring replays?

Q. Scoring replays.

A. Would you word that once more?

Q. In the design and engineering of these games are provisions made to tighten up the payoff percentage at the discretion of the operator or owner or manufacturer?

A. Only if he actually disassembles something which he didn't mean to be disassembled. I am answering that because I heard some other gentleman testify here before, which was in error. He may not have had the opportunity to acquaint himself with it, but you would have to disassemble it.

129. Q. Let me indicate an item on the back board of this games, which says "Extra balls—L. M." and "C." What is the meaning of that?

A. Of the letters?

Q. What is the meaning of "Extra balls" as it appears on the back?

A. The games is five balls, as I mentioned before. The extra ball feature is—I don't know what you call it—but it is a ~~dé~~lux attachment to the game which is not necessarily used all over the country. Where territories cannot operate games with the extra ball feature they will disconnect it. That is what I mean by disassemble.

Q. This machine does have the extra ball feature, does it not?

A. Yes, all three do.

Q. Government's Exhibit 5 has the extra ball unit?

A. Yes, sir.

Q. Then, on this card which is inserted in the machine there are the letters "L, M and C". What do those letters refer to?

A. You can reduce the extra balls.

Q. What do the letters refer to? What words do 130 those letters represent?

A. It is merely a code. I will explain. This is probably what you are driving at.

If I have this in this position as I am showing here, the extra balls would be more predominant than if I had it over here.

Q. What words do the letters L, M and C represent?

A. No words at all.

Q. They don't mean liberal, moderate and conservative, or liberal, medium and conservative?

A. Let me put it this way. It is probably embarrassing me to answer. You want me to come up with an explanation for those words, but I write the manual and I don't believe you will find any printed matter anywhere that would indicate that. It is a three-stage circuit.

Q. How did you happen to pick those letters to indicate your three-stage progress? Does the letter "L" refer to a greater number of free balls or extra balls, or the lesser number of extra balls?

A. It is the maximum.

Q. What does the letter "C" refer to?

A. Well, it would be the minimum.

131 Q. How about the letter "M"?

A. Between the two.

Q. There is another card on here that says "corners". Can you show us on the face of the machine what corners are referred to?

A. This would be the corner play, which are right here, which scores 200 replays when lit. If this panel lights and I go in pockets numbers 9, 6, 3 and 11 I have showed a corners replay winner.

Q. The letters L, M and C opposite the corners which are in conjunction with the electrical device here?

A. The connector plug.

Q. Connector plug?

A. Yes.

Q. What is the meaning of the letter L with respect to that connector plug?

A. I think that will go together on the same basis there.

Q. A maximum number of corner plays or corner play opportunities?

A. Yes, opportunities, yes.

Q. The "M" stands for the medium number?

132 A. Yes.

Q. And the "C" stands for a minimum number?

A. Yes.

Q. You demonstrated you could pull it out and put it back in again with reasonable facility. Is that true also of the corner connector plug? Can that be adjusted with ease?

A. Yes, oh, yes.

Q. Can it be adjusted by the owner and operator of the machine without it going back to the factory and without it being disassembled?

A. I maybe used the word loosely. If you disconnect you shut it off. If you move it back one position you have changed the extra ball frequency and moved it over somewhere else.

Q. You changed the extra ball frequency for us now. Let us, say, make it maximum.

A. Let's go to maximum there.

Q. As to the opportunity of getting those extra balls as far as the player is concerned, what control does he have over getting the extra balls?

A. Well, the player must insert coins or play off replays with the red button.

Q. If he inserts coins does he get an extra ball 133 at all times?

A. No, not at all times.

Q. When he inserts that coin does he have any way of determining in advance where he is going to get an extra ball?

A. He buys it to a degree, I believe, when he spends a replay. He may advance and illuminate one light or two lights.

Q. Would you say before that, when he puts in the dime does he know what is going to happen there with reference to extra balls?

A. Not every time, no.

Q. Does he know at any time?

A. After he has obtained one light first or the extra light he has an indication he now is closer.

Q. In other words, he is being induced to put in another dime and he may get another ball at that point?

A. It is advertising, yes, sir.

Q. Isn't it a fact that the opportunity for his getting that extra ball is all pre-set in advance for him on that device marked "Extra balls" on the machine over which 134 the player has no control whatsoever?

A. When you say "pre-set" do you mean at a given time?

Q. At any time?

A. At a given time the game will automatically give a ball and illuminate the first extra ball.

Q. My question is: With relation to the player himself when he puts a dime in the machine, does he have an opportunity to control the action of that machine, that is, so far as to whether it is going to give him an extra ball or not?

A. No.

Q. It is determined for him by the machine itself, is it not?

A. That is right.

Q. By the setting of a machine?

A. No settings, no, not settings.

Q. No?

A. No.

Q. By what?

A. Well, we spoke of this mixer.

Q. The extra balls, isn't that determined by this locator?

A. That is a phase of the circuit. You understand, when you condition a game for a play or for an extra ball pay, the unit must operate, and a predetermined circuit is in here to average out the frequency of that extra ball light or any other given feature. He can't wind up with 100 per cent cash going in and 100 per cent rescores. There is no revenue in there. They would be playing if all day.

Q. What do you call that operation?

A. Mixer and spotting.

Q. Spotter?

A. Spotting.

Q. Is that a continuous relay?

A. No, it is a rotary unit. We call it a rotary unit.

Q. What is the purpose of that unit?

A. Well, something has to signal the various game features to come on in the back glass so the player knows how many game advantages he may shoot for. That unit, in short, will automatically allow these game features to illuminate, light up.

Q. That will automatically allow those game features to illuminate?

136 A. Yes.

Q. When the player places a dime in the machine does this mechanism rotate or does it start operating at that point?

A. Yes, sir.

Q. And then it selects certain odds for the player, does it?

A. The score indication here, yes.

Q. Does it do anything else besides selecting the odds?

A. It shows the scores. It shows any game feature shown on the back glass depending on which particular game we are referring to.

Q. When another dime is put in will it do anything else?

A. It will operate and prorate.

Q. To increase, perhaps, the scores?

A. It may add game features. It may increase scores.

Q. By "game feature" you are referring to what?

A. In this case it would be "corners"; "super-card", "magic lines," "stars" red and yellow stars.

Q. Those are all opportunities that the player gets from time to time as he put dimes in the slot, is that 137 correct?

A. Of course; the game is conditioned for a full, complete game with the insertion of one coin or one replay with additional game features.

Q. So that extra game features come incidental to the insertion of the first coin?

A. Two-thirds may come up on the insertion of the first coin.

Q. They may or may not?

A. They may or may not.

Q. By insertion of additional coins the odds may or may not increase and other game features may or may not show up, is that correct?

A. That is correct.

Q. The player has no control over whether the odds increase or additional game features show up, has he? All he does is put his dime in?

A. The insertion of dimes or replays.

Q. This rotary unit here does that operate by the pre-determined setting, or what is the causitive factor that makes it operate to cause the additional games or additional game features or odds to light up?

138 A. A 180 degree rotation of one cam in there will release this for that period of time.

Q. What does that mean?

A. Well, the motor is operating. Each of these contact plates are equipped with their own indexing arm. None of them can rotate with the motor operating and none of these release arms is energized. So when the game is conditioned for play this unit operates. The timing cam assembly, as you can call it, rotates 180 degrees. One set of points will release this and allow this to rotate for the on period of the 180 degrees over here.

Q. That is a setting that is determined in advance, is that right?

A. Well, you are talking about this 180 degrees now?

Q. Yes.

A. Yes, it is. The cam is cut to rotate and keep it energized for X number of degrees.

Q. This rofary machine when it is going around may or may not cause additional odds to appear on the machine, additional game features to appear, and it does that insofar as the player is concerned by presenting to him additional winning possibilities. It may or may not present additional winning possibilities to him, is that right?

A. Yes.

Q. As far as the player is concerned it is a matter of chance, is it not?

A. I guess you could say it would be chance.

Q. As a matter of fact, is there any essential difference as far as the player is concerned between the operation of this device and the operation of the wheels on the one-arm bandit slot machine?

A.. Yes, because of no opportunity to benefit from what you have purchased. It is strictly a matter of rotating wheels against a scrambled time element?

Q. These are the electrical—

A. Can I finish?

Q. Excuse me.

A. That is the slot machine operation. This explanation is only one part of the game. The game itself is propelling the balls out on the play field and using the game features you have purchased. Nothing is purchased in 140 the slot machine.

Q. Is it not a fact that this selecting device, to the extent that it operates with the same degree of chance or maybe even less degree of chance but with no degree of skill, is the same as the slot machine, the one-arm-bandit type of slot machine?

A. I can only agree to this extent, that the two units could be related mechanically and functionwise, but this unit as it is used is entirely different than the unit you speak of in a slot machine because there once the reel is spun and stops, it is over.

Q. You are going beyond me. In the slot machine, the one-arm bandit type, the reels spin around and they determine the odds, do they not, that the player receives by the way of the bells and plums that come up?

A. The intensity of winning of cash rewards.

Q. That is odds, isn't it?

A. They determine that by mechanical means.

Q. Those reels operate by inertia, do they not?

A. No, they are spring loaded.

141 Q. Once the springs stop the reels go forward. It shoots them into action and they keep rolling until inertia stops them?

A. Then index arms will release and stop the reels, one, two, three.

Q. Doesn't this rotary device operate on a similar principle as the electronic advancing of those spinning reels in the slot machine?

A. Without the wires connected to this unit I would say the two units are similar, yes.

Q. Without the wires?

A. Yes,

Q. Now, the player himself has no control, does he, over the mechanism in the machine which determines whether or not he is to receive the greater opportunities upon the insertion of an additional coin?

A. No.

Q. The player has no control over the rotary device, does he?

A. No, sir.

Q. You testified that you had traveled over the country and that you had had the opportunity of seeing people play these games with greater or lesser degrees of skill.

142 Incidentally, are you a skilled player yourself?

A. Twenty years ago, yes, but not today.

Q. I suppose that the first ball that is shot by a skilled player goes any place as far as he is concerned?

A. There again I would say no, not with the real proficient player.

Q. He knows where he wants the ball?

A. He has a fairly good idea. He has played the game. If he never played the game, your question is correct. If he played the game before, he is now exercising skill and judgment, too, because he has realized that certain lines are more favored than others for the simple reason that the skill with which he may shoot into the vertical line—I am pointing to the right now—will score more often than any other line shown on the card.

Q. Isn't that controlled by this reflex mechanism?

A. It has nothing to do with it. It is strictly the player.

Q. Doesn't the reflex mechanism tell whether or not the winning numbers will be selected?

143 A. Oh, please, no, no. This card has nothing to do with the mechanism. What you shoot, the skill with which you play, you benefit from that on this card. There is nothing in the mechanism that is related to this except it takes six volts to light this light, nothing else. It takes a circuit to register the free balls. There is no relation with any unit other than that.

Q. The reflex unit is related to what?

A. To game features.

Q. And to odds?

A. Yes, sir, the scores show here.

Q. Now, you say that on one side of the machine it is easier to get the balls in than on the other.

A. I say this particular line has become a favorite amongst people who are more skillful and they will immediately on the first ball attempt to shoot for any one of these numbers.

Q. So they have got to get two more numbers in line to get a winner?

A. Yes, sir.

Q. After a long series of play and after obtaining the highest degree of skill in using this plunger mechanism 144 and also in bumping the machine, it is possible to shoot the ball and bump the machine in such manner as to play the ball in the same hole ninety-nine times out of a hundred?

A. I don't think so, no, no more than I could bowl a 300 game ninety-nine times out of a hundred.

Q. Is it possible for a skillful player to place the ball in the same hole fifty times out of a hundred?

A. Of course, we never made any actual calculations on it. Our figures that we have available show us that skillful players will score a fair amount of more replays than new player or less skillful player.

Q. You cannot state that a skillful player could get the ball in the same hole fifty times out of a hundred?

A. The only thing I—

Q. Can you state that or not?

A. No, I wouldn't say that.

Q. Can you state that a skillful player could get the ball in the same hole five times out of a hundred?

A. Yes.

Q. Yes?

145 A. Yes.

Q. Could you do that?

A. I am not a skillful player.

Q. Do you have a skillful player available who can do it for us?

A. I don't think so.

Q. In a game of skill all players have the same opportunity insofar as the device is concerned to win the same proportion, do they not? In bowling, each player has the same opportunity. He has the same ball; the same pins;

the same alley; and whether he loses or wins the game depends upon his own dexterity in propelling the ball down the alley?

A. Yes.

Q. The winnings that the individual players make on these machines are entirely dependent on the mechanism within the machine and on the money they play in the machine, are they not?

A. The total number of replays scored over a given period of time will always be the same. Do I make myself clear?

Q. For the same odds?

146 A. I don't care about anything. The total replays scored would always be the same in a reasonable given time. If you and I play five minutes you would be correct; but it can average itself out. Whether you were skillful or not skillful the game will score a total number of replays which are always fairly constant. The figure is always constant.

Q. When you step up to the machine and put a dime in to start playing you may have one set of odds or another set; you may have game features?

A. Yes.

Q. Each time you play the machine, whether you have the odds of 96, 16 and 14, or 96, 20 and 6, those things are determined by the machine rather than by your skill in the operation of the machine, is that right?

A. The indication of those, yes, but over--

Q. If you win it is determined by the odds that would pay off on that basis?

A. They register whatever group is illuminated.

Q. Depending on the odds which are set up by the machine itself?

A. Well, something has to indicate it.

147 Q. But at any rate, the player doesn't have control over that?

A. No, only additional plays; that is all.

Q. He hasn't any control over it?

A. He has control over scoring. The scoring would be the play field and the card.

Q. What controls that?

A. The skill controls how frequently three-in-line scores occur.

Q. What is the skill exercised?

A. Through the use, as I mentioned, of the ball shooter and the guide plate, the nudging, and in this game, jumbo flippers and the legs. You notice these wear marks? I mentioned that before. That is definitely from that. That is what it is from.

Q. You say the wear came from nudging. You don't know whether or not that wear would come from leaning on the machine, do you?

A. The best answer there would be, of course, that it seems peculiar no matter which particular game you look at, they all have the same wear marks. In other words, it indicates the habits of the people playing are the same, and they are not leaning on the game or resting on it. They are playing it like this, and like that.

148 Q. When the ball is released by this plunger and the ball comes up to the first line of pockets, does the player have any control over the operation of that ball beyond the first line of pockets?

A. Yes, as I mentioned, he will then use this nudging to the fullest degree. For example, if he needed number 11 hole, which is approximately in the center of the play board, and he is over here at a post just slightly to the left of number 8 he then can propel that ball by nudging it over toward the 11.

Q. We are looking at Government's Exhibit 4. Will you play that machine and will you nudge that machine to move the ball into the hole?

A. (The witness operated the machine.)

I am not a skillful player.

Q. I notice the machine tilted when you nudged it.

A. Yes, it is not set properly.

Q. It is not set properly?

A. No.

Q. Should it be set so that it doesn't tilt?

A. The tilt device is only a means for preventing vandalism. As far as the nudging occurs, we want 149 that. The operator of the machine wants that. It is more attractive to the player because he can employ additional skill.

Q. How much of a tilt is put on the machine whenever you hit it?

A. I said this particular machine is not adjusted. It is out of adjustment. That is not a fair comparison. Another thing, the game isn't level. The regular adjustments aren't on. They are not adjusted.

Q. Now we have Government's Exhibit No. 5. Do you know how to activate the lever? Will you operate the ball for us?

A. Bear with me a minute. I am not skillful.

Q. You are just as skillful as I am, I am sure. Will you nudge the machine?

A. Give me another try.

Q. All right:

A. I can tilt it where it belongs. In fact, you have a cable laying on the tilt bar here.

Q. The tilt can be adjusted?

A. It is meant to be adjusted because of the slower conditions and locations. There has to be some device. 150 It is a protection against vandalism. If anyone attempts to pick up this game and manhandle it, he is damaging valuable property.

I can't attempt to play under those conditions. You can see the reason.

Q. Isn't it a fact that the tilt device is such that it prevents you from exercising a great degree of skill over the machine?

A. No, sir, you are very, very wrong on that.

Q. Now, with reference to Government's Exhibit 3, you indicated that there was something that you called a jumbo flipper.

A. I just thought of that name now because the other gentleman called it a flipper.

Q. I don't believe the gentleman testified as to that device.

A. No, it is just that it performs the same function.

Q. Will you show us on that?

A. (The witness operated the machine.)

Q. Now you have activated Government's Exhibit No. 3. How many dimes have you put in there so far?

A. The game is not working. I mean, the "bump" 151 is out. You get them right away.

Q. How many dimes have you put in there so far?

A. I don't know. I can't testify on the game until I am sure it is operating. It is not operating.

Q. You mean the "bumps"?

A. The owner would know if it is cut off or out of order. I wouldn't know.

Q. Will you examine Government's Exhibits 4 and 5 and see if those "bumps" devices are present on those machines.

A. These are other models and they don't have it.

Q. Only Government's Exhibit No. 3 has the "bump" device?

A. Yes.

Q. Will you explain to us how the "bump" device operates when it does operate on the machine.

A. The whole playing field floats—not floats but is fastened to rollers. The play field roughly is capable of moving three-eighths of an inch under activated electromatic action. In other words, it would be the same as if I do this.

Q. Hitting it hard?

152 A. The actuation of the buttons will perform the same function and shift the board forward and return in a fraction of a second.

Q. When do you have occasion to do that?

A. When this is lit.

Q. You mean in relation to the ball rolling down the field?

A. You have access to it and use it as you see fit, but the big advantage is, of course, when you are on the left side of the play field and you want to go to the right side of the play field. As soon as you contact a rubber post, you actuate the button.

Q. Which makes the whole field move?

A. I would make it maybe two, three bumps will work it from the left side to the right side from the actuation of the button and the play field going forward will bring the ball to you, back to the number 8 which, say, you needed. You hit it and she went back to 8.

Q. Isn't that opportunity for bumping a game feature?

A. Yes.

Q. Obviously, it didn't light up when you started 153 this operation.

A. It should come on with the first coin.

Q. It should always come on with the first coin?

A. Yes.

Q. I see there is a series of numbers with the word "number"? Does that mean the number of additional bumps which you can obtain?

A. Additional bumps which you obtain by additional play. The additional coin or replays is what I mean. In other words, the first coin will give you four and additional plays will increase it six, seven, eight, nine, ten.

Q. It may or may not, isn't that right?

A. From four on.

Q. It may or may not give you the first four?

A. You should get the first four with the first coin.

Q. You mean when you put in your first dime it should always give you the first bump?

A. The first four bumps.

Q. And if it doesn't go on?

A. It goes on if it is operating properly.

Q. This machine was operating properly and there was nothing wrong and there was nothing done to it
154 according to the testimony of the people that owned it.

A. The testimony of whom?

Q. The testimony of the people that owned it.

A. I didn't examine it. I wouldn't be the one in the room that would know. I would want to examine it.

Q. Incidentally, how much money can a player put in one of these machines before he plays a single game? Is there any stop to the number of dimes he can put in to increase the odds?

A. It is only common sense once all game features are lit that he would definitely stop. There is no incentive beyond that to play any more.

Q. What is the maximum amount of money that the machine will hold? How many dimes will go in one of those things?

A. You mean in the box?

Q. Yes, how much would it take?

A. Well, you are on a subject that is out of my line. I don't worry about that. The mechanical, electrical and the play features is my job. I can give you a guess, but

I don't think I would be very accurate.

155. By The Court: What is the object of the game?

By The Witness: I beg your pardon, your Honor?

By The Court: What is the object of the game other than to test your skill?

By The Witness: Well, the object is to score replays so that you may play.

By The Court: What is a replay? Is that just another play?

By The Witness: Yes.

By The Court: I say, what is the ultimate object of the game other than just to test some skill?

By The Witness: Your Honor, if you will allow me to answer this way; all I can say is that people who play these games definitely derive a tremendous amount of amusement from it. They do, professional men, laborers, people in all walks of life. I have asked. I tried that at different times when we were ready to come out with a new model.

156 By The Court: Where does the ecstasy come in?

By The Witness: Trying to score a lot of replays, I guess.

By The Court: If you get a hundred replays what do you do with them?

By The Witness: Play them back.

By The Court: You play on?

By The Witness: I think it is to be able to brag, "Look what I did." In other words, in a high score type game I could say, "I made 1,000,000." Over here on this game, I could say, "Oh, boy, I ran this up to 182 plays. Just you beat that, Joe." It is a quirk of human beings. I don't know.

By Mr. Barnett:

Q. Do you know what the replay meter is?

A. Yes.

Q. Would you point that out to us?

A. Here it is.

Q. It is on the side; and on Exhibit No. 5 it now registers 2891.

157 Isn't there something called the knock-off button on that machine?

A. That button under the cabinet here which would be used—well, for example, as I mentioned, I had 182 free games and my wife is anxious to have me home and I

don't want to play them off now. I tell the merchant, of course, that I am going. Naturally, he is not going to stand there and play them off one at a time. He then uses that button and that will restore the register to zero and will indicate on here.

Q. It will indicate on here what?

A. Whatever I had registered up there.

Q. If it was a hundred games it would add one hundred games to the replay meter down here?

A. Yes.

Q. What is the purpose of that?

A. Well, you see, for forty-eight states and the territory of Alaska, in other words, to come up with something that wouldn't require special games for various types of territories where they can use that, we make all games in this manner.

Now, it is also used in territories where, well, redeeming games are supposed to be illegal. We will use it for a convenience, as I just gave you an example. We will 158 use it as a convenience. In other words, let me put it another way.

Q. The fact is the proprietor will pay off a dime per play, as that is the purpose of replays?

A. Will you repeat that?

Q. Isn't that replay meter there so that the owner or collector when he comes around to the machine in the tavern or wherever the machine is operating will be able to allow him an adjustment out of proceeds in the box according to the replay meter?

A. If he made some redemptions for some reason for unused games, I agree.

Q. But that is the purpose?

A. It is a means for bookkeeping. It is an accounting. You have to have some accounting.

Q. You don't have to have it unless there is money involved, do you?

A. You would, if I went home and you said, "Well, come back and take care of it tomorrow. Here are sixteen coins you got coming." I then run off home. After work I may stop by and play your sixteen coins or the 160 coins, or whatever it was.

159 Q. How long has this machine been on the market?

A. You mean this type or this particular machine?

Q. This particular machine.

A. It runs around three months.

Q. Three months?

A. Yes.

Q. It has been on the market three months?

A. It was on the market three months, this particular machine.

Q. What is the generic term for this machine or game?

A. In-line games.

Q. In-line games?

A. Yes.

Q. That refers to winning numbers in line; is that the reference?

A. Scoring three in line, four in line, five in line.

Q. Are they also called bingo machines?

A. I have heard that, yes.

Q. Are they also called keno machines in Boston?

A. In Boston it is beano.

Q. How long have these machines, the bingo machines, been on the market or the in-line machine? How long 160 have you been manufacturing in-line machines?

A. I think it is the latter part of 1950 or the first part of 1951, if my memory is right. It is approximately that. I am close, within four or five months, anyway.

By Mr. Barnett: I have no further questions.

By Mr. Herr: I have none, your Honor.

(Witness excused.)

By Mr. Herr: If the Court please, at this time I desire to offer in evidence the exhibits identified by Mrs. Vollner this morning and which happened by chance to be marked Exhibits 7 and 8. I would like to have those received in evidence as Defendant's Exhibits 1 and 2.

By The Court: Is there any objection?

By Mr. Herr: Mrs. Vollner identified both instruments.

By Mr. Barnett: These are photostatic copies, are they?

By Mr. Herr: Yes, sir. Mrs. Vollner said they are the forms used.

161 By Mr. Barnett: No objection.

By The Court: They may be received.

(Said documents, so offered and received in evidence, were marked Defendant's Exhibits 1 and 2.)

By Mr. Herr: I would like to offer in evidence, too, if the Court pleases, the receipt given Walter Korpan for the three devices when paying the special tax with respect to the three machines in evidence, but I will ask for leave to withdraw. Defendant's Exhibit 3 is the receipt number 3197501 issued by the Government and bearing the signature of collection officer Frank Evangelista. Defendant's Exhibit 4 is the receipt issued by the Department of Internal Revenue bearing number 207135 and issued to Walter Korpan, Korpan's Landing, Fox Lake, Illinois, and indicating that the license expires June 30, 1956, the amount paid being \$825.00 and which a witness for the

Government testified included \$750.00 as taxes and \$75.00 as penalty. I will ask for leave, if I may, to withdraw this tax receipt or whatever it may be called and substitute either a photostatic copy or a typewritten copy therefor.

By The Court: Is there any objection to the offers?

By Mr. Barnett: May I see those, please?
I have no objection.

By The Court: They may be received.

(Said documents, so offered and received in evidence, were marked Defendant's Exhibits 3 and 4.)

By Mr. Herr: I desire to offer in evidence as Defendant's Exhibit 5 the Revenue Act of 1941 and the bills in their various forms as introduced in committee, in this instance being page 74 of Volume 27 of bills in their various forms as prepared for the Congressional Committee and Congressional Record and I will ask for leave to substitute in place of the volume.

By The Court: It isn't proper to be offered in evidence.

By Mr. Herr: I thought that was probably the way I would have to do it. I recognize the Court takes judicial notice of it.

By The Court: You may file it with your written brief.

By Mr. Herr: May I also file with the brief letters and communications between the Internal Revenue Department, the Treasury Department and the Collector of In-

ternal Revenue; and from the Department of the Collector of Revenue to various inquiring agencies with respect to the application of the tax and their interpretations thereof?

By The Court: I am very much in doubt whether the agent of the Government can bind the Government in matters of that kind.

Is there any objection?

By Mr. Herr: I have submitted those, by the way, to Mr. Barnett.

By Mr. Barnett: I might say that the documents that he has here purport to be copies of original documents on file elsewhere. I have no means of determining the 164 validity of the documents, if they do mean anything, and I question their relevancy.

By The Court: Objection sustained. The law is the law and what Tom, Dick or Harry says it is doesn't make any difference.

By Mr. Herr: I recognize that, too, your Honor.

Then I will file with my brief, if I may, if the Court pleases, photostatic excerpts from those reports..

By The Court: Yes.

By Mr. Herr: I have supplied counsel with those photostats already..

By The Court: All right.

By Mr. Herr: With that we rest, your Honor.

An Thereupon The Defendant Rested His Case.

165 By Mr. Herr: I believe the proper procedure at this time should be a motion for acquittal at the close of all of the evidence, and I believe a brief to be submitted to the Court within ten days.

By The Court: Do you want to submit a brief?

By Mr. Barnett: I should like the opportunity of submitting a reply brief within five days following.

By The Court: Is that agreeable?

By Mr. Herr: Yes.

By The Court: Then the defendant will submit his brief within ten days. How long did you want?

By Mr. Barnett: Five days will be sufficient.

By The Court: The Government will submit a reply brief five days thereafter.

Would you want oral argument?

By Mr. Herr: I would like oral argument, if the Court please.

By The Court: I won't listen to you very long after I have read the briefs.

By Mr. Herr: I know the Court will review the briefs. May I put it this way? If the Court desires oral argument we will set it down.

166 By The Court: I will set it down.

By Mr. Herr: May I withdraw my exhibits to be included in the record, if necessary?

By The Court: Yes.

I will hear you briefly on the 21st day of November.

By Mr. Barnett: With the consent of counsel may we substitute photostatic copies of Government's Exhibits 1 and 2?

By Mr. Herr: Yes.

By The Court: Very well.

167

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

C E R T I F I C A T E

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 156 is a full, true and accurate transcript of the original short-hand notes of all the proceedings had at the trial of the above-entitled cause on October 25, 1955, before the Honorable John P. Barnes, Chief Judge of said Court.

Roy E. Fuller

Roy E. Fuller

Official Court Reporter
United States District Court
Northern District of Illinois

October 28, 1955.

168

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

TRANSCRIPT OF PROCEEDINGS.

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on Thursday, December 8, 1955, at 10:00 o'clock a.m.

Appearances:

Hon. Robert Tieken, United States District Attorney,
by
William A. Barnett, Esq., Assistant United States District Attorney,
on behalf of the Government;
Simon Herr, Esq.,
on behalf of the Defendant.

168a And thereupon the following proceedings were had herein:

By The Clerk: No. 55 CR 486: United States of America *vs.* Walter Korpan.

Defendant's motion for a new trial.

By The Court: Proceed.

By Mr. Herr: Your Honor, after the matter was disposed of on Monday we held some conferences, as the result of which we believe that the matter should be reviewed in order to get some final determination on the question which has extensive implications.

The defendant is presently on bail in the amount of \$1,000.00. Your Honor fined him \$750.00.

I propose to carry through with the appeal with such dispatch as the situation will permit. And in view of the fact that there is \$1,000.00 bail in cash deposited with the Clerk of this Court I ask the Court to permit the defendant's enlargement on bail in that amount pending the appeal.

By The Court: Did you serve notice?

By Mr. Herr: Yes.

By The Court: What do you say?

By Mr. Barnett: We have no objection to that, your Honor.

169 By The Court: Make the order.

By Mr. Herr: Thank you.

By The Court: What about your motion for a new trial?

By Mr. Herr: I have filed a written motion for a new trial.

By The Court: That will be overruled.

By Mr. Herr: And motion in arrest of judgment.

By The Court: Overruled.

170

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 3 is a full, true and accurate transcript of my original shorthand notes of the proceedings had upon the hearing of the above matters in the above-entitled cause on December 8, 1955.

Roy E. Fuller

Roy E. Fuller

Official Court Reporter

United States District Court

Northern District of Illinois

December 12, 1955.

171

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on Monday, December 5, 1955, at 10:00 o'clock a.m.

Appearances:

Hon. Robert Tieken, United States District Attorney,
by

William A. Barnett, Esq., Assistant United States Dis-trict Attorney,

on behalf of the Government;

Simon Herr, Esq.,

on behalf of the Defendant.

172 By Mr. Herr: Your Honor, I believe this is an argument on the defendant's motion for acquittal at the close of all of the evidence. I don't know, if the Court

please, if you have had time to read the briefs and memorandum.

By The Court: I have.

By Mr. Herr: Because that will, to some degree, limit the extent of the discussion, if your Honor has found the time to do it.

By The Court: I have, sir.

By Mr. Herr: May I commence by reviewing the nature of the action; it being an indictment charging the defendant with wilfully violating the particular statute referred to in the indictment, namely Sections 4462 of the Federal Code.

The question in this case, then, is whether the act under which the indictment was framed contemplates that there shall be a prosecution for failing to obtain a stamp in the amount of \$250.00 on a pin ball machine as against and distinguished from a slot machine.

The legislature or the legislation on the subject, your Honor, found its origin in the purpose to derive revenue from various activities and enterprises. In 1941 the 173 legislature, knowing undoubtedly what a pin bill machine was, and what a slot machine was, and how one was distinguishable from the other, knowing their vagaries and their elements, set up proposed legislation.

If your Honor will take the present Act and line it up alongside of—I believe it is Exhibit 6, your Honor—your Honor will note that while the Legislature or Congress started out with that purpose, when Congress started out its purpose was to define and distinguish between pin ball machines as a class and slot machines, pin ball machines were declared by Congress to be by their very language machines that afforded amusement. Congress did not say that they lacked an element of chance or that the dependency on whether or not the tax shall be imposed was the resolving of the question of whether or not the gambling feature was there involved. They recognized a distinction based upon economic factors, the economic factors being as follows:

The slot machine which is referred to in the history as the "one armed bandit" was a source of very substantial revenue to its operators. The pin ball machine did 174 not enjoy such revenue and could not. Since the revenue wasn't available on the operation of the machine, there was a distinction made in their classification for the purposes of taxation.

In 1941 there was then passed an act which said:

"As used in this part, the term 'coin operated and gaming devices' means:

"1. So-called pin ball and other similar amusement machines operated by means of the insertion of a coin, token or similar object."

Your Honor will note, before I continue with the section there of that pin ball and other similar amusement machines operated by means of the insertion of a coin, it set up a certain class and type of machine. Undoubtedly Congress knew, and we must suppose that they did know what constituted a pin ball machine, how it was functioning, what its factors were, and what its involvements were in the common use thereof.

Then they set up another classification, they said:

"2. So-called 'slot' machines' which operate by means of the insertion of a coin, token or similar object and which, by means of the element of chance, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise or tokens."

Your Honor will note that pin ball machines are referred to as amusement machines. Your Honor will note that slot machines are referred to as machines which operate by the application of the element of chance solely. Had the word "wholly" been put in there, there would be no question about it. Its absence, however, is readily understandable in the context in which it is used because in one paragraph or sentence the term "pin ball" is used, whereas in the next sentence the word "slot machine" is distinctly referred to as a machine that is—the outcome of which is determined essentially and entirely by the element of chance.

It doesn't say in part by chance; it says, "by the element of chance."

In other words, "wholly by the element of chance."

Now, then, with respect to pin ball machines, like any other activity or endeavor of man, an element of chance will enter and the extent to which it enters may determine the result. However, when the legislation passed does not say "the result," but instead distinguishes one from the other by virtue of the inherent characteristics of the machines, you have a well defined purpose expressed in fixing the types of tax or the amounts of tax to be attached to each of the types.

When the matter came on for hearing and further consideration in '42 before the Congressional Committees, they again concerned themselves with the question of the amount of tax to be charged against each of these types of devices.

So in 1942 hearing were had.

Your Honor, in the memorandum and the exhibits submitted to you, we did not include one that I think has some importance and which was part of the Congressional hearings. That relates to the statement by one of the Congressmen, Mr. Eberharder, when he said:

"What we intended was to tax one armed bandits \$250.00,—nothing else."

Nothing else, just that.

The Congressmen knew, the Senators knew, every body commonly knows how a pin ball machine is operated. Congress has said it supplies an amusement. Congress also recognized, and it will appear from the exhibits submitted, that the revenue on pin ball machines is entirely dissonant from and dissimilar from that derived from slot machines and that they couldn't stand the tax, that there has to be a distinction.

Now there has been no change materially in the law from that point forward up to the change in the amount of tax from \$250.00 for pin ball machines and \$10.00, to this, and it is a matter of language.

If your Honor will now have before you the present Act and the one first passed in 1941, your Honor will note that what had been done was to expand the area of amusement machines to include not only pin ball machines but other types. For example, in 1941 the clause read:

"As used in this part, the term 'coin operated amusement and gaming devices' means:

"1. So-called pin ball and other similar amusement machines operated by means of the insertion of a coin—"

and so forth.

When it was revised it was revised to read:

"Any amusement or music machine operated by means of the insertion of a coin—"

Why? Because the field was broadened. It did not then exclude pin ball machines but broadened the area of amusement machines not alone to be just pin ball machines but every other type of amusement machine wherein a slot was involved and the insertion of a coin involved.

Now with reference to the second part, the language is, I believe, identical, if your Honor will follow it, with respect to both the '41 Act and the latest one. Your Honor will note the language is identical.

"So-called slot machines which operate by means of the insertion of a coin, token or similar object, and which by application of the element of chance—
That means only by, solely by the element of chance—

"may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise or tokens."

The term does not include bona fide vending machines which are not incorporated with gaming or amusement features. In other words, a slot machine does not include gaming or other amusement features, or machines of that nature. It is limited solely to one type of machine, a slot machine.

When Congress defined the term "slot machine" in the Jefferson Act, they described it, and that was a machine having reels and drums upon which certain symbols appeared and which in combination resulted in a payout.

The term "slot machine", then, when used by Congress, means the common, every day accepted-type of machine.

Not alone, your Honor, was that the clear intention of Congress in the adoption of these regulations or provisions as appears from the legislative history which we have incorporated or submitted to the Court by way of exhibits, but it also appears, your Honor, in the understanding of the Act by the U. S. Treasury Department. If I may be permitted, I would like to read just two communications of which I have photostatic copies, your Honor, indicating that understanding.

There is one dated August 17, 1951, "Mr. Edward 180 Blumenfield"—

May I go back a step? This letter is from the U. S. Treasury Department, office of Collector of Revenue, Post Office and Court House, Indianapolis 6, Indiana, Internal Revenue Service, District of Indiana.

"Mr. Edwin Blumenfield,
314 Wellard Avenue
Michigan City, Indiana

"Reference is made to your letter of August 15, 1951, stating that you are operating a machine referred to as "one ball." It does not have a slot paying money.

In case of a winning score, free games are awarded for winning scores. The player can refuse the free game or games and take cash. The cash is given by the operators of the establishment where the machine is placed.

"This is the arrangement between yourself and the proprietor of the establishment. There is nothing in the machine explaining this or anything else concerning a prize.

181 "You are advised in this connection the Commissioner of Internal Revenue has held that the machine must deliver to the person playing cash, tokens, premiums, or merchandise; or the machine must indicate to the person playing or operating the machine that he is entitled to receive cash, premiums, merchandise or tokens.

"In other words, the machine must have a legend inscribed thereon notifying the player what he is to receive. Private arrangements between the player and the proprietor would not bring the machine within the classification of a gaming device.

"From the information submitted, these machines would only be subject to the coin-operated amusement device special tax."

There is another letter, your Honor, and this letter is from the U. S. Treasury Department in Washington 25, D. C., Office of the Commissioner of Internal Revenue, addressed to Mr. Roy Barnett. I understand this Mr. Barnett is a relative of the Assistant District Attorney prosecuting this case.

182 "Mr. Roy Barnett

208 South LaSalle Street,
Chicago, Illinois.

Dear Mr. Barnett:

"Receipt is acknowledged of your letter dated March 27, 1951 enclosing a letter of the same date from the Exhibit Supply Company, Chicago, Illinois, concerning the special tax imposed by Section 3267 of the Internal Revenue Code and its application to a certain type of game which it manufactures.

"Pictures and instructions concerning the game were enclosed with the letter.

"The device is a coin-operated electric shooting target called 'Gun Patrol.' To increase player appeal, the device has incorporated an automatic ticket

unit which vends a ticket indicating the skill at six certain fixed scoring points. The tickets are used in some areas to draw for a weekly or monthly prize. Advice is desired as to whether the Gun Patrol should be classified as an amusement or gambling device within the meaning of Section 3267 of the Code.

183 "The coin operated device 'Gun Patrol,' regardless of whether prizes are offered for scoring hits, is considered to be a coin operated amusement device since successful operation is attained by the player's skill, as distinguished from the element of chance predominant in slot machines and other similar gaming devices. Accordingly, persons maintaining for use such devices on premises occupied by them incur special tax liability of \$10.00 per year per machine."

184

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 13 is a full, true and accurate transcript of the original short-hand notes of certain proceedings had on December 5, 1955, as above set forth, before the Honorable John P. Barnes, Chief Judge of said Court. (This is not a complete transcript of all the proceedings in said cause on said day.)

Roy E. Fuller

Roy E. Fuller

Official Court Reporter

United States District Court

Northern District of Illinois

December 20, 1955.

THIS TAX RETURN IS COMPLETED AND FILED WITH DISTRICT DIRECTOR

WU 36 212

Form 11-B Rev. Mar. 1954

U. S. Treasury Department
Internal Revenue Service

**SPECIAL
TAX
RETURN**

FOR PERIOD BEGINNING
JUL

1955

From 05 05 1955

TO June 30, 1955

Make payment to the "District Director of Internal Revenue." Payment must be made by cash, certified check, cashier's check, or money order. Enter amount of payment below.

\$50.00



248808

For District Director's Use Only
Return Number
2 3148

Date of issue

File separate return for each class of tax.

List names and addresses of owners on reverse side.

See attached instructions

6-22-55

(Date)

Wallertorpe

(Signature)

Dowson

(Title)

10-70211-1

Walter Korpan, 102 Lakeview Ave, Fox Lake, Ill.

Home Address

Name

List name and address of owners of individual partners.

CLASS OF TAX	FULL YEAR Montblj	RATE OF TAX	POOL OF BILLIARD TABLES
Gaming Device	\$250.00	820.83 1/3	20.00
Ambuscade Device	10.00	.83 1/3	1.66 2/3
Bowling Alley	20.00	1.66 2/3	20.00
Billiard Device			20.00
Pool or Billiard Table			20.00

In order to avoid penalties file your return on time with the District Director of Internal Revenue.
FILE SEPARATE RETURN FOR EACH CLASS OF TAX.

Form 11-B Rev. Jan. 1954

U. S. Treasury Department
Internal Revenue Service**SPECIAL
TAX
RETURN**For Period Beginning
7-31-55Enter (Month) (Year)
TO 6-30-56

Make payment to the "District Director of Internal Revenue." Payment must be made by cash, certified check, cashier's check, or money order. Enter amount of payment below.

Tax **\$750.00**
Pen **75.00**
\$825.00

THIS TAX RETURN MUST BE COMPLETED AND FILED WITH DISTRICT DIRECTOR

Walter Korpan
Korpan's Landing
Fox Lake, Ill.

Class of Tax

Gaming-Pin ball

REC'D WITH REMITTANCE
825 4
SEP 21 1955
DIST. DIR. INT. REV.
CHICAGO

Show Number of Devices,
Alleys, or Tables ► **3**

PREVIOUS YEAR'S
RETURN NUMBER **2**For District Director's
Use OnlyReturn Number **227105**

Date of Issue

File separate return for
each class of tax.List names and ad-
dresses of owners on
reverse side.See attached
instructions

File with District Director of Internal Revenue, Chicago, Ill.

If above information is incorrect, see Instructions

I declare under penalties of perjury that the statements in this return are true and correct to the best of my knowledge and belief; that this return applies only to the specified business and location; and that the maximum number of devices, alleys, or tables for which tax is incurred is shown above.

10-70211-1

(Date)

(Signature)

(Title)

PRINT YOUR NAME AND ADDRESS

SPECIAL-TAX RETURN
(SEE INSTRUCTIONS ON BACK)

(Stamp number)

1. Name _____
(Print name, followed by trade name—see paragraph 4 on reverse side)

2. Business address _____
(Street and number, or rural route) (City or town) (County) (State) (Entered in record 10)
(Date of issue)

3. Kind of tax stamp _____ for period _____ to June 30, 19_____
(See reverse side, separate form necessary for each kind of tax) (Month) (Year)

Show by X in one of the following squares the nature of the application: ADDITIONAL UNIT PLACED IN OPERATION:

FIRST APPLICATION. RENEWAL. CHANGE OF ADDRESS (Date) _____
 CHANGE OF OWNERSHIP (Date) _____ FORMER OWNER _____

NAME OF INDIVIDUAL OWNER, OR IF PARTNERSHIP, NAMES OF ALL PARTNERS

HOME ADDRESS

Indicate below number of machines or units for which you are paying tax on this return. File separate return for each kind of tax.

Coin-operated AMUSEMENT DEVICES (pinball and all other amusement or music machines) \$10 each

Coin-operated GAMING DEVICES (slot machines and all other machines involving element of chance) \$100 each

Bowling alleys \$20 each

Billiard and pool tables \$20 each

Sworn to and subscribed before me
this _____ day of _____, 19_____

I swear (or affirm or acknowledge) that the above statements are true and correct and the special-tax stamp herein applied for is to cover only the business indicated above and at the location specified.

	Dollars	Cents
Cash*		
Certified or Cashier's Check*		
Money Order*		

(Signed) _____

(Official title of officer administering oath or signatures of witnesses—see paragraph 8, reverse side)

Received by collector _____

This return, properly executed, must be in the hands of the Collector of Internal Revenue at _____ with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties.

*Cross out form of payment NOT used.
Make remittance payable to "Collector of Internal Revenue." Enter amount in above space.

(State whether individual owner, member of firm, or if officer of corporation, give title)

Form 11-B
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised Feb. 1952)

PRINT YOUR NAME AND ADDRESS
SPECIAL-TAX RETURN
(SEE INSTRUCTIONS ON BACK)

(Stamp number)

1. Name
(Print name, followed by trade name—see paragraph 4 on reverse side)
2. Business address
(Street and number, or rural route) (City or town) (County) (State)
(Entered in record 10)
3. Kind of tax stamp for period to June 30, 19
(See reverse side, separate form necessary for each kind of tax) (Month) (Year)

Show by X in one of the following squares the nature of the application: ADDITIONAL UNIT PLACED IN OPERATION.

FIRST APPLICATION. RENEWAL.
 CHANGE OF OWNERSHIP (Date)

CHANGE OF ADDRESS (Date)
FORMER OWNER

NAME OF INDIVIDUAL OWNER, OR IF PARTNERSHIP, NAMES OF ALL PARTNERS

HOME ADDRESS

Indicate below number of machines or units for which you are paying tax on this return. File separate return for each kind of tax.

Coin-operated AMUSEMENT DEVICES (any amusement or music machines) \$10 each

Coin-operated GAMING DEVICES (slot machines and all other machines involving element of chance) \$250 each
See instructions (3)

Bowling alleys \$20 each

Billiard and pool tables \$20 each

I declare under the penalties of perjury that the above statements are true and correct to the best of my knowledge and belief, and the special-tax stamp herein applied for is to cover only the business indicated above and at the location specified.

	Dollars	Cents
Cash*		
Certified or Cashier's Check*		
Money Order*		

(Signed) Date

*Cross out forms of payment NOT used.
Make remittance payable to "Collector of Internal Revenue." Enter amount in above spaces.

(State whether individual owner, member of firm, or if officer of corporation, give title)

Received by collector

This return must be in the hands of the Collector of Internal Revenue at with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties.

DEFENDANT'S EXHIBIT NO. 2

95

WALTER KORPAN KORPAN'S LANDING FOX LAKE ILLINOIS			207135
This stamp is not transferable on change of ownership of business.			This is a tax receipt -- not a license
Class of tax GAMING			Number of Devices, Alleys, or Tables 3
Period beginning July 1, 1955 or:			EXPIRES JUNE 30, 1956
Amount of tax \$750.00	Additions \$75.00	Total \$825.00	KEEP THIS STAMP POSTED
RETURN NUMBER 2-27105			CHICAGO
ISSUED BY DISTRICT DIRECTOR OF INTERNAL REVENUE			
UNITED STATES SPECIAL TAX STAMP INTERNAL REVENUE			
THE INTERNAL REVENUE LAWS provide that the payment of any tax imposed by such laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State.			

194 And afterwards, to wit, on the 5th day of December, 1955, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

195

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney comes also the defendant Walter Korpan in his own proper person and by his counsel and the Court now having heard the final arguments of counsel and being fully advised in the premises it is

Ordered that the defendant's motions for judgment of acquittal be and the same are hereby denied and the Court finds the defendant guilty as charged in the Indictment filed herein against him and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered and Adjudged by the Court and is the sentence and judgment of the Court upon the finding of guilty that the defendant Walter Korpan forfeit and pay to the United States of America a fine in the sum of Seven Hundred Fifty Dollars (\$750.00) and the costs of prosecution to be taxed and on motion of the defendant by his counsel it is

Further Ordered that execution be and the same is hereby stayed for a period of Three (3) Days.

John P. Barnes
United States District Judge

December 5, 1955

196 And afterwards on, to wit, the 8th day of December, 1955 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Motion For New Trial in words and figures following; to wit:

197

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

MOTION FOR NEW TRIAL.

Now comes Walter Korpan, defendant, by Simon Herr his attorney, and moves the court to grant him a new trial, and assigns as reasons therefor the following:

- (1) The finding and judgment of the trial court is contrary to the evidence.
- (2) The finding and judgment of the trial court is contrary to the law.

For which reasons defendant prays that said Motion for a New Trial be granted.

Simon Herr

Attorney for Defendant

198 And on the same day, to wit, on the 8th day of December, 1955, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

199

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

This cause coming on for hearing on the defendant's motions for a new trial and in arrest of judgment and for enlargement of defendant on bail pending appeal come the parties by their counsel and upon due consideration the Court being fully advised it is

Ordered that said motions for a new trial and in arrest of judgment be and the same hereby are overruled and it is

Further Ordered that defendant's motion for enlargement on bail pending appeal be and the same hereby is granted and said bail is fixed at One Thousand Dollars (\$1,000.00) and it is

Further Ordered that bail on appeal be and the same hereby is fixed at One Thousand Dollars (\$1,000.00) and that one bond shall cover both of the foregoing.

200 And afterwards on, to wit, the 15th day of December, 1955 came the Appellant by his attorneys and filed in the Clerk's office of said Court his certain Notice Of Appeal (Clerk's Certificate Of Mailing Attached Thereto) in words and figures following, to wit:

201

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

NOTICE OF APPEAL.

Name and address of appellant:

Walter Korpan
Korpan's Landing
Fox Lake, Illinois

Name and address of appellant's attorneys:

Simon Herr
111 West Monroe Street
Chicago, Illinois
Crowley, Sprecher and Weeks
100 West Monroe Street
Chicago, Illinois

Offense: Appellant, Walter Korpan, was charged by indictment of having violated Section 7203 of Title 26, U. S. Code, in that he did maintain for use and permit the use on certain premises of certain coin-operated gaming devices as defined in Section 4462(a)(2) of Title 26 U. S. Code, by reason of which fact appellant was a person obligated to pay the special occupational tax on coin-operated gaming devices imposed by Section 4461(2) of Title 26 U. S. Code, and that appellant, well knowing such facts, wilfully and unlawfully failed to pay the aforesaid occupational tax.

202 Statement of Judgment or Order, and dates thereof:

On December 5, 1955 the Honorable John P. Barnes, Chief Judge of said Court, entered Judgment finding appellant, Walter Korpan, guilty as charged and imposing a fine upon the said appellant in the amount of \$750.00 and costs.

100 *Notice of Appeal and Certificate of Mailing*

On December 8, 1955 the Honorable John P. Barnes, Chief Judge of said Court, entered Orders denying appellant's Motion for a new trial, and in arrest of Judgment.

I, Walter Korpan, the above named appellant hereby appeal to the United States Court of Appeal for the Seventh Circuit from the above said Judgment.

Walter Korpan

By Simon Herr

Simon Herr

Crowley, Sprecher and Weeks

Crowley, Sprecher and Weeks

Attorneys for Appellant

Dated: December 14, 1955.

203

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 55 CR 486) *

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on December 15, 1955, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure and Criminal Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Honorable Robert Tieken, United States Attorney,
450 United States Court House
Chicago 4, Illinois

Honorable Kenneth J. Carrick, Clerk
United States Court Of Appeals, Seventh Circuit
1212 Lake Shore Drive
Chicago 10, Illinois

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, 1955.

(Seal)

Roy H. Johnson

Clerk

By *Gizella Butcher*
Deputy Clerk

214 And afterwards on, to wit, the 13th day of January, 1956 there was filed in the Clerk's office of said Court a certain Appeal Bond in words and figures following, to wit:

* * * IN THE UNITED STATES DISTRICT COURT *

* * * (Caption—No. 55 CR 486) * * *

215 KNOW ALL MEN BY THESE PRESENTS, THAT Walter Korpan of Fox Lake, State of Illinois as principal, State of , as sureties, are held and firmly bound unto the United States of America in the full and just sum of One Thousand Dollars (\$1,000.00), to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 13th day of January, In the Year of our Lord, One thousand Nine Hundred Fifty-Five.

Whereas, lately on the 5th day of December, 1955, at the December Term of the United States District Court for the Northern District of Illinois Eastern Division, in a cause pending in said Court between the United States of America, Plaintiff, and Walter Korpan, Defendant, a judgment and sentence were rendered against said Walter Korpan and the said Walter Korpan having filed in the office of the Clerk of said United States District Court Notice of Appeal to the United States Court of Appeals for the Seventh Circuit from the said United States District Court to reverse the judgment and sentence in the aforesaid suit, and whereas said appeal is to operate as a supersedeas upon filing of this bond.

Now the Condition of Said Obligation Is Such, That if the said Walter Korpan shall appear in person in the United States Court of Appeals for the Seventh Circuit on the day of , A.D. 19 , of the October Term 19 , and from day to day thereafter in said Court until said cause shall be finally disposed of, and shall abide by and obey the judgment and all orders made by the United States Court of Appeals for the Seventh Circuit, in said cause and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct, if the judgment and sentence against him shall be affirmed or the appeal is dismissed and if he shall appear for trial in the United States District Court for the North-

ern District of Illinois, Eastern Division, on such day or days as may be appointed for retrial by said District Court and abide by and obey all orders of said Court, provided the judgment and sentence against him shall be reversed by the United States Court of Appeals for the Seventh Circuit, then the above obligation to be void; otherwise to remain in full force, virtue, and effect.

And in the event that default be made in the condition of this writing obligatory as herein provided, it shall be lawful for and the undersigned irrevocably authorize and empower the United States Attorney of said District, whoever he may be, or any Assistant United States Attorney of said District, or any Attorney authorized to appear in the United States District Court of said District, to appear for us in the said United States District Court at any time thereafter and confess a judgment in the amount of this obligation, together with costs, in favor of the United States of America and against the undersigned, without process and without a trial by jury, the undersigned hereby waiving the right of a trial by jury, and we do hereby waive and release all errors which may intervene in any such proceedings, and consent to the immediate issuance of execution upon said judgment, and we do hereby ratify and confirm all that said attorney may do by virtue hereof.

If this bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in the United States District Court for the Northern District of Illinois, Eastern Division against each of the undersigned jointly and severally for the amount above stated together with interests and costs, and execution may be issued or payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

Walter Korpan
112 E. Lakeview Ave.
Fox Lake, Ill.

Signed and acknowledged
before me this 13th day of
January 1956.

William E. Keeley, Jr.

Deputy Clerk

Approved;

Roy H. Johnson

United States District Judge

R. Tieken

Asst. U. S. Attorney

One Thousand Dollars deposited Sep. 3, 1955 on Appearance Bond to also stand as security on this home.

R. Masters, Cashier
Deputy Clerk

216 And afterwards on, to wit, the 22nd day of December, 1955 came the Defendant-Appellant by his attorneys and filed in the Clerk's office of said Court his certain Designation Of Contents Of Record On Appeal And Statement Of Points in words and figures following, to wit:

217

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55-CR 486) * *

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

Defendant-appellant, Walter Korpan, hereby designates for inclusion in the record on appeal to the United States Court of Appeals for the Seventh Circuit, taken by Notice of Appeal filed December 15, 1955; the following portions of the record, proceedings, and evidence in this cause:

1. Indictment filed September 2, 1955.
2. Appearance of defendant and his attorney, Simon Herr, filed September 8, 1955.
3. Plea of not guilty filed October 17, 1955.
4. Jury waiver filed October 25, 1955.
5. Complete transcript of proceedings had before the Honorable John P. Barnes on October 25, 1955, and Government's Exhibits 1, 2, 3, 4 and 5 and Defendant's Exhibits 1, 2, 3 and 4.
6. Those portions of the transcript of oral argument on motion for acquittal by counsel for defendant had on December 5, 1955, contained in transcript of said oral argument beginning with third full paragraph on page 9 and ending with page 13, said portions relating to two letters from United States Treasury Department to Edwin Blumenfield, dated August 17, 1951, and to Roy Barnett.
7. Judgment order entered December 5, 1955, by Honorable John P. Barnes, denying motions of defendant for judgment of acquittal, finding defendant guilty as charged, ordering defendant fined \$750 plus costs, and staying execution three days.

218

8. Motion for new trial and in arrest of judgment filed December 8, 1955, and notice thereof.
9. Order entered December 8, 1955, by Honorable John P. Barnes, overruling defendant's motion for new trial and in arrest of judgment, granting defendant's motion for enlargement on bail pending appeal, fixing bail on appeal at \$1000, one bond to cover both of the foregoing.
10. Notice of appeal filed December 15, 1955.
11. Appeal bond filed December _____, 1955.
12. This designation of contents of record on appeal.
13. Statement of points.
14. Journal entries.

Simon Herr

Simon Herr

105 West Monroe Street

Chicago 3, Illinois

Crowley, Sprecher and Weeks

Crowley, Sprecher and Weeks

100 West Monroe Street

Chicago 3, Illinois

Attorneys for Defendant-Appellant

Service of copy of the foregoing designation is acknowledged this 22nd day of December, 1955.

R. Tieken by E. Tillotson
Attorney for Plaintiff-Appellee

219

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

STATEMENT OF POINTS

The points upon which appellant will rely upon appeal are:

1. The court erred in refusing to grant defendant's motion for judgment of acquittal at the close of plaintiff's case.
2. The court erred in refusing to grant defendant's motion for acquittal at the close of all of the evidence.
3. The court erred in entering judgment finding defendant guilty as charged in the indictment.
4. The findings of the court are contrary to the law.
5. The findings of the court are contrary to the evidence.

*Statement Required under Rule 10 (c) of the Rules, 105
of the United States Court of Appeals for the
Seventh Circuit*

6. The court erred in overruling defendant's motion for new trial.
7. The court erred in overruling defendant's motion in arrest of judgment.

Simon Herr

Simon Herr

105 West Monroe Street

Chicago 3, Illinois

Crowley, Sprecher and Weeks

Crowley, Sprecher and Weeks

100 West Monroe Street

Chicago 3, Illinois

Attorneys for Defendant-Appellant

220 Service of copy of foregoing Statement of Points is acknowledged this 22nd day of December, 1955.

R. Tieken by E. Tillotson

Attorney for Plaintiff-Appellee

221 And afterwards on, to wit, the 30th day of December, 1955 came the Plaintiff-Appellee by its attorneys and filed in the Clerk's office of said Court its certain Statement Required Under Rule 10(e) Of The Rules Of The United States Court Of Appeals For The Seventh Circuit And Government's Additional Designation Of Record On Appeal in words and figures following, to wit:

222

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * * *

**STATEMENT REQUIRED UNDER RULE 10(e) OF
THE RULES OF THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT**

The name of the appellee is:

UNITED STATES OF AMERICA.

The names and addresses of its counsel of record are:

R. Tieken, United States Attorney

John Peter Lulinski, Assistant United States Attorney

Anna R. Lavin, Assistant United States Attorney

William A. Barnett, Assistant United States Attorney

450 United States Court House

Chicago 4, Illinois

R. Tieken

R. Tieken

United States Attorney

223

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

GOVERNMENT'S ADDITIONAL DESIGNATION
OF RECORD ON APPEAL

The United States of America, plaintiff-appellee, by R. Tieken, United States Attorney for the Northern District of Illinois, hereby designates the following for inclusion in the record on appeal to the United States Court of Appeals for the Seventh Circuit:

1. The entire transcript of proceedings had on December 5, 1955.

R. Tieken

R. Tieken

United States Attorney

JPL:RQ

224 AFFIDAVIT OF MAILING

State of Illinois

County of Cook—ss

Walter H. Shearde being first duly sworn, on oath deposes and says that he is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the 30th day of December, 1955, he placed a copy of the Government's Additional Designation in a Government franked envelope addressed to:

Name: Simon Herr, Esq. & Crowley, Sprecher & Weeks
Address: 105 W. Monroe St. 100 W. Monroe St.

Chicago 3, Ill. Chicago 3, Illinois

and that he placed said envelope in the United States mail chute, located in the United States Courthouse, Chicago, Illinois, on said date at the hour of about 4:00 P. M.

Walter H. Shearde.

Subscribed And Sworn to
before me this 30th day of
December, A. D. 1955.

Ruth I. Quinlan
Notary Public

225 — And afterwards on, to wit, the 19th day of January, 1956 came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation in words and figures following, to wit:

226

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * * *

S T I P U L A T I O N

It is hereby stipulated by and between the parties hereto, by their respective attorneys, that the originals of Government's Exhibits 1 and 2 and Defendant's Exhibits 1, 2 and 4 be certified and transmitted to the United States Court of Appeals for the Seventh Circuit by the Clerk of the United States District Court for the Northern District of Illinois, and that the said originals be made a part of the record on appeal, subject to the approval of the Court.

It is further stipulated that Government's Exhibits 3, 4 and 5 (consisting of three pin ball machines) be certified by the Clerk of the United States District Court for the Northern District of Illinois; that said exhibits be made part of the record on appeal; and that the said Exhibits be held by the said Clerk until the further order of the United States Court of Appeals for the Seventh Circuit.

227 It is further stipulated that Defendant be permitted to substitute in lieu of original Defendant's Exhibit 3, which original Exhibit counsel for Defendant has been unable to locate, a "Descriptive Statement in Lieu of Original Defendant's Exhibit 3" in words and figures as follows: "Defendant's Exhibit 3 is a preliminary tax receipt numbered 3197501 and issued by the District Director of the Internal Revenue Service, Chicago, Illinois, to Walter Korpan, Korpan's Landing, Fox Lake, Illinois, acknowledging payment by Walter Korpan of \$750.00 tax and \$75.00 additions, or a total of \$825.00, for these gaming devices for the period beginning July 1, 1955 and expiring June 30, 1956;" that the said Statement be filed, certified

and made a part of the record on appeal in lieu of the original of Defendant's Exhibit 3, subject to the approval of the Court.

R. Tieken, U. S. Attorney
Attorney for Plaintiff-Appellee
Simon Herr
Simon Herr
105 West Monroe Street
Chicago 3, Illinois
Crowley, Sprecher and Weeks
Crowley, Sprecher and Weeks
100 West Monroe Street
Chicago 3, Illinois

Attorneys for Defendant-Appellant

228 And on the same day to wit, on the 19th day of January, 1956, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

229

IN THE UNITED STATES DISTRICT COURT

* * * (Caption—No. 55 CR 486) * *

O R D E R

This cause coming on to be heard upon the stipulation of the parties:

It Is Ordered that the originals of Government's Exhibits 1 and 2 and Defendant's Exhibits 1, 2 and 4 be certified and transmitted to the United States Court of Appeals for the Seventh Circuit by the Clerk of the United States District Court for the Northern District of Illinois, and that the said originals be made a part of the record on appeal.

It Is Further Ordered that Government's Exhibits 3, 4 and 5 (consisting of three pin ball machines) be certified by the Clerk of the United States District Court for the Northern District of Illinois; that said exhibits be made part of the record on appeal; and that the said Exhibits be held by the said Clerk until the further order of the United States Court of Appeals for the Seventh Circuit.

It Is Further Ordered that Defendant be allowed leave to substitute in lieu of original Defendant's Exhibit 3

230 a Descriptive Statement in Lieu of Defendant's Orig-

inal Exhibit 3", in words and figures as follows: "Defendant's Exhibit 3 is a preliminary tax receipt numbered 3197501 and issued by the District Director of the Internal Revenue Service, Chicago, Illinois, to Walter Korpan, Korpan's Landing, Fox Lake, Illinois, acknowledging payment by Walter Korpan of \$750.00 tax and \$75.00 additions, or a total of \$825.00, for these gaming devices for the period beginning July 1, 1955 and expiring June 30, 1956"; and that the said Statement be filed, certified and made a part of the record on appeal in lieu of the original of Defendant's Exhibit 3.

John P. Barnes
United States District Judge

Dated: January 19, 1956.

231 United States of America

Northern District of Illinois—ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designations of Contents Of Record On Appeal filed in this Court in the cause entitled: United States of America, Plaintiff vs. Walter Korpan, Defendant, No. 55 CR 486, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office, except the exhibits which are incorporated herein originally by direction of this Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 23rd day of January, 1956.

(Seal)

Roy H. Johnson

Clerk

By. Gizella Butcher

Deputy Clerk

232 United States of America

Northern District of Illinois—ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete Supplemental Record in lieu of portions of original record, heretofore certified to the United States Court of Appeals, Seventh Circuit, on January 23, 1956, which have been lost or mislaid.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 9th day of May, 1956.

(Seal)

Roy H. Johnson

Clerk

By Gizella Butcher

Deputy Clerk

111 In the United States Court of Appeals for the
Seventh Circuit

No. 11669

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

WALTER KORPAN, DEFENDANT-APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS, EASTERN DIVISIONBefore DUFFY, Chief Judge, SWAIM and SCHNACKENBERG, Circuit
Judges*Opinion*

September 28, 1956

SWAIM, Circuit Judge. This case comes here on appeal from a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, finding the defendant, Walter Korpan, guilty of having violated § 7203 of Title 26 U. S. C. A., and fining the defendant \$750.00 plus costs.

The indictment charged and the trial court found that the defendant, on premises occupied by him, maintained and permitted the use of certain coin-operated gaming devices as defined in § 4462 (a) (2) of Title 26 U. S. C. A.; that the defendant thereby became obligated to pay the special occupation tax imposed by § 4461 (2) of Title 26 U. S. C. A.; and that the defendant willfully failed to pay such tax in violation of § 7203 of Title 26 U. S. C. A.

The decisive issue is whether the coin-operated machines in question are amusement devices as defined in Section 112 4462 (a) (1) or gaming devices as defined in paragraph (a) (2) thereof. If the machines here in question were described by subsection (a) (1) they were subject to a tax of only \$10.00 a year but if they were gaming devices as described in subsection (a) (2) the annual tax on each machine was \$256.00. 26 U. S. C. A. § 4461.

The facts, briefly, are as follows: The defendant operates a vacation resort known as "Korpan's Landing" in Fox Lake, Illinois. On August 12, 1955, certain coin-operated devices (commonly known as "pinball machines") were located in the resort's main building, a combination restaurant and tavern. On June 22, 1955, the defendant filed a tax return for the fiscal year July 1,

1955 through June 30, 1956, covering five amusement coin-operated devices and paid the tax of \$10.00 per device. During the month of August 1955 the defendant exhibited an amusement device tax stamp for the machines in question.

The three machines involved in this litigation are basically alike. The insertion of a coin (a dime) activates the game and brings the first of five balls in front of a ball plunger. The game is played on an inclined board containing a number of holes into which the balls may enter. By pulling the plunger back and releasing it the ball is put into play. The legs of these games are so constructed as to allow a certain "give" which permits the player to "nudge" the machine forward, backward or sideward. The playing surface contains numerous rubber ringed posts and the player may nudge the game and cause the ball to contact one of these posts thereby increasing or cushioning the rebound of the ball. Scores are credited to the player if he causes a ball to roll into the holes. The scoring is registered on a vertical glass panel on the back of the board. Free replays are scored upon principles similar to bingo, i. e., the lighting of three, four or five lights in a row (horizontally, vertically or diagonally). The player to some extent may control the course the ball will travel on the playing surface. The ball plunger rests inside a ball guide plate which is calibrated with either six or seven scored lines to permit the player to gauge the intensity of his shots. This permits the player to attempt to shoot the ball to the right or left side of the playing field. As noted above, the player may nudge

the game in an attempt to control the course of the ball once it enters the playing surface. Each machine is

equipped with a "tilt" device (which may be adjusted), and if the game is nudged too strongly this device will cause the word "tilt" to appear on the scoring panel and make the machine inoperative until an additional coin is inserted. The possibility of scoring more replays (by raising the odds) is increased by depositing additional coins. Additional balls may also be secured by depositing additional coins when the original five balls have been expended. An extra ball is not always obtained by the deposit of an additional coin. The extra ball feature may either be disconnected or adjusted to increase or reduce the possibility of obtaining an extra ball. The machines also incorporate certain "game features" which afford additional methods of scoring replays. These "added attractions" are determined by an electrical system. The only control the player has over such features is by depositing additional coins which may or may not produce a given feature. The machines also house a device known as a "reflex unit." Although there was dispute as to its precise function, it appears that it more or less balances out the high win-

nings as against small winnings. That is, the total replays will tend to be the same over a given period of time. The replays that are won are registered by an electrical scoring mechanism on the score board. The player has the choice of playing off the games won or of receiving money for them from the defendant. Each machine has a device called a replay meter housed behind a locked door next to the cash box inside the machine. When cash is paid for games won, the proprietor presses a cancellation button on the bottom of the machine which removes the games won from the scoreboard and registers them on the replay meter inside the machine. This serves as an accounting device which permits the collection man to determine the number of games paid for by the proprietor for the purpose of reimbursing him.

It is undisputed that on August 12, 1955, the defendant made cash payments to witness Annette L. Veit in the sum of \$1.00 for ten replays and to witness John M. Shannon in the sum of \$1.20 for twelve replays.

It is the contention of the defendant that the plain meaning of 26 U. S. C. A. § 4462 (a) (2) and the intent of Congress in the enactment thereof expressly exclude the machines in question from the definition of gaming devices as set forth in that paragraph and that these machines are coin-operated amusement devices as defined in paragraph (a) (1) thereof.

The relevant portion of Section 4462 is as follows:

“§ 4462. Definition of coin-operated amusement or gaming device.

“(a) In general.—As used in sections 4461 to 4463, inclusive, the term ‘coin-operated amusement or gaming device’ means—

“(1) any amusement or music machine operated by means of the insertion of a coin, token, or similar object, and

“(2) so-called ‘slot’ machines which operate by means of insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens.”

Section 4462 (a) (2) lays down three requirements in defining a coin-operated gaming device: (1) it must be operated by means of the insertion of a coin or similar object; (2) the application of the element of chance must be involved by virtue of which, (3) the machine may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise or tokens.

It is the Government’s contention that if a particular machine incorporates these three incidents it meets the definition of a coin-operated gaming device and consequently is subject to the gaming tax rate of \$250.00 for each such machine. The difficulty with

this argument is that it overlooks the introductory language of paragraph (a) (2), i. e., "so-called 'slot' machine."

If the dictionary definition of "slot machine" were applied, it is clear that these machines would be covered by the definition of coin-operated gaming device.

"A machine the operation of which is started by dropping a coin in a slot." Webster's New International Unabridged Dictionary, 2d Ed. 1955.

When this definition is considered with the choice of language employed by Congress, i. e., "so-called 'slot' machine which 115 operates by means of the insertion of a coin, token or similar object * * *," it would appear that Congress intended a more restrictive meaning for the term "slot machine." Otherwise, there appears no purpose for the use of the language "so-called 'slot' machine."

The term "so-called" is a modifying word implying doubt as to the correctness or propriety of so designating a thing. See Webster's New International Unabridged Dictionary, 2d Ed. 1955. And the use of quotation marks to set off the word "slot" indicates that Congress did not intend the language "so-called 'slot' machine" to be as comprehensive as the dictionary definition of "slot machine." Every word used in a statute is presumed to have a meaning and purpose, and, if possible, every word must be accorded significance and effect. Washington Market Co. v. Hoffman, 101 U. S. 112; Adler v. Northern Hotel Co., 7 Cir., 175 F. 2d 619. We conclude, therefore, that not only must these machines incorporate the three incidents noted above, but they must also be "so-called 'slot' machines."

Since the term "so-called 'slot' machine" is not adequately defined in Section 4462 nor elsewhere in the Internal Revenue Code, it becomes necessary to resort to extrinsic evidence in order to accord meaning and purpose to this language.

The defendant in urging this point suggests that the term "slot machine" as used in Section 4462 refers specifically to a machine in which the insertion of a coin releases a lever or handle which, in turn, when pulled activates a series of spring-driven drums or reels with various insignia painted thereon, usually bells and fruit (colloquially called a "one-armed bandit").

There is force to this conclusion when the language thus employed is reviewed in light of the legislative history of Section 4462.

Before reviewing the legislative history of this statute it would be well to consider the argument advanced by the Government that the statute is clear and unambiguous, and that consequently there is no necessity for looking behind the words of the statute

in order to determine what the intent of Congress was. We do not believe, however, that these words are sufficient in and 116 of themselves to determine the purpose of the legislation.

In such an event "When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination?'" *United States v. American Trucking Associations, Inc.*, 310 U. S. 534 at pages 543-44.

Sections 4461 to 4463 of the Internal Revenue Code were proposed by the House of Representatives of the 77th Congress. They were part of the Revenue Revision of 1941. As passed by the House a tax of \$25.00 was assessed on each "coin-operated amusement and gaming device." H. R. 5417, § 555. These devices were defined as:

"(1) so-called '*pin-ball*' and other similar amusement machines, operated by means of the insertion of a coin, token, or similar object, and

"(2) so-called '*slot*' machines which operate by means of insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens." [Emphasis added.]

The report of the Ways and Means Committee also indicates an intent to exclude pinball machines from the category of slot machines. The report stated: "'Coin-operated amusement or gaming devices' are, briefly, machines which fall within the general classification colloquially referred to as '*pin-ball*' machines and '*slot machines*'.¹" H. R. Rep. No. 1040, 77th Cong. 1st Sess. P. 60 (1941). The proposed bill, as subsequently passed by the Senate, apparently accepted the exclusion of pinball machines from the definition of slot machines, and reduced the tax on the former to \$10.00 per device and raised the tax on the latter to \$50.00 per device. The report of the Senate Finance Committee explained its proposed amendment as follows:

"The House bill places a special tax of \$25 per year upon each coin-operated amusement or gaming device maintained for use on any premises.

"Your Committee divides these devices into two categories.

Upon *so-called pin-ball or other amusement devices* operated 117 by the insertion of a coin or token, the tax is reduced to \$10 per year. Upon *so-called slot machines*, however, the tax is placed at \$200. per year." Sen. Rep. No. 673, 77th Cong. 1st Sess. P. 21 (1941). [Emphasis added.]

The House accepted the Senate amendments. See H. R. Rep. No. 1203, 77th Cong. 1st Sess. P. 18 (1941), and the bill as amended

became law as Section 3267 of the Internal Revenue Code of 1939—Public Law 250, 77th Cong. 1st Sess.

Subsequent to the outbreak of war Section 3267 was amended. The original language of the House bill of 1941 was amended to read: "any amusement or music machine * * *." H. R. 7378, § 617. The purpose of the amendment was to enlarge the category of machines subject to taxation. It might be inferred that by dropping the term "pinball machine" from the definition of coin-operated amusement device Congress intended to treat such machines as gaming devices. However, in H. R. Rep. No. 2333, 77th Cong. 2d Sess. P. 180 (1942), it was stated:

"This section amends section 3267 of the Code by defining the term 'coin-operated amusement devices' to include all amusement machines and music machines operated by means of the insertion of coins, tokens, or similar objects. Under this amendment there will be included *in addition to pin-ball machines* a great variety of other machines, such as baseball and football games, machine-gun games, music machines (so-called juke boxes), and many other types of coin-operated games." [Emphasis added.]

See also Sen. Rep. No. 1631, 77th Cong. 2d Sess. P. 266 (1942), and Congressman Eberharter's statement made at hearings before the Committee on Ways and Means. Hearings, 83rd Cong. 1st Sess. P. 2517.

With the exception of increases in the rate of taxation and technical changes of form adopted in 1954, the provisions of Section 3267, as amended in 1942, remain unchanged as Sections 4461 to 4463 of the Internal Revenue Code.

Although the legislative history of Section 4462 does not clearly demonstrate the meaning and purpose which Congress intended to attribute to the language, "so-called 'slot' machine," it does indicate that Congress intended to exclude pinball machines from the category of gaming devices.

The Government, nevertheless, contends that these machines are coin-operated gaming devices which entitled winning players to receive cash. The Government cites state court decisions holding that machines similar to the ones here involved are gaming devices. See People v. One Mechanical Device, 9 Ill. App. 2d 38, 132 N. E. 2d 338; State ex rel. Dussault v. Kilburn, 111 Mont. 400, 109 P. 2d 1113. However, these cases are inapposite for they concern the construction of local legislation which employ terminology quite different from that in Section 4462. Cf. Ill. Rev. Stats. Ch. 38, § 342 (1955). The Government also cites Johnson v. Phinney, 5 Cir., 218 F. 2d 303, for the proposition that a pinball machine is a game of chance. The issue there arose out of the applicability of the wagering tax and is clearly distinguishable. Further, the question here is not whether pinball machines are

gaming devices or games of chance; that they are may well be conceded. The question is rather: are pinball machines embraced within the term "so-called 'slot' machines." Congress has clearly indicated that they are not.

Statutes which relate to the same thing or same class of things are often helpful in construing a particular statute. See Great Northern Ry. v. United States, 315 U. S. 262.

The Johnson Act, passed on January 2, 1951, prohibits the interstate shipment of gambling devices which it defines as follows:

"(1) any so-called 'slot machine' or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon and (A) which when operated may deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

"(2) any machine or mechanical device designed and manufactured to operate by means of insertion of a coin, token, or similar object and designed and manufactured so that when operated it may deliver, as the result of the application of an element of chance, any money or property * * *." 15 U. S. C. A.

§ 1171.

119. If this definition were applied to the machines here involved it is clear that they are without its scope. A drum or reel with insignia thereon is not an essential part of defendant's machines, nor are these machines designed and manufactured so that when operated they may deliver any money or property.

We have been referred to only two cases which have considered the question before us. Tooley v. United States, 134 F. Supp. 162; United States v. One Bally Dude Ranch Coin-Operated Pin-Ball Machine (Civil Action No. 1778, D. C. M. D. Tenn., Dec. 10, 1953). The Tooley case was an action for refund of a portion of special occupation tax paid for a certain coin-operated device known as the "Sidebottom Super Crane Machine." The court there did not consider the meaning of the term "so-called 'slot' machine," as used in the statute, but concluded that "the expression 'by application of the element of chance' as used in said section 3267 (b) (2) [predecessor to the statute here involved] merely requires that there be a substantial element of chance involved in the play of the machine, and does not require that the element of chance predominate over the element of skill."

The defendant has urged that since the play of a pinball machine involves a modicum of skill it is not a machine which "by application of the element of chance * * * may deliver, or entitle the person playing or operating the machine to receive

cash \$ * *." In our view of the case we do not reach this question and voice no opinion thereon.

The One Bally Dude Ranch case, a forfeiture action, was on a motion for summary judgment. We have been informed that a hearing on the merits had been continued.

The Government concludes from two cases under the Johnson Act, 15 U. S. C. A. § 1171, that devices far removed from "so-called 'slot' machines," i. e., certain "digger" machines, have been held subject to the gaming tax. *United States v. 24 Digger Merchandising Machines*, 8 Cir., 202 F. 2d 647, cert. denied 345 U. S. 998; *United States v. 10 Digger Machines*, 109 F. Supp. 825. However, the Johnson Act contains a broader definition of "gambling device" than the definition which we must interpret in the instant case.

120 Only one last point need be considered. The Government insists that Treasury Department regulations include pinball machines as gaming devices where unused free plays are redeemed, and such regulations are entitled to the force and effect of law. T. D. 5203, 1942-2 Cum. Bul. 276, 26 C. F. R. 323.22. But it is elementary law that a Treasury regulation which is inconsistent with a provision of the Internal Revenue Code has no force and effect. The Government, nevertheless, urges that these regulations have been in effect throughout subsequent amendments of Section 4462 and that it must therefore be assumed that the regulations have received Congressional approval.

We cannot assume on the facts of this case that Congress considered T. D. 5203, as stating the true construction of Section 4462 when it is shown that only of late has the regulation been followed. See *Casey v. Sterling Cider Co.*, 1 Cir. 294 Fed. 426.

We conclude that the pinball machines here involved are not gaming devices as defined in 26 U. S. C. A. § 4462 (a) (2).

For the reasons set forth above, the judgment of the District Court is reversed.

[Clerk's Certificate to foregoing paper omitted in printing.]

121 In United States Court of Appeals for the Seventh Circuit
 No. 11669

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

WALTER KORPAN, DEFENDANT-APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Before Hon. F. RYAN DUFFY, Chief Judge, Hon. H. NATHAN SWAIM, Circuit Judge, Hon. ELMER J. SCHNACKENBERG, Circuit Judge

Judgment

September 28, 1956

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed.

122 [Clerk's certificate to foregoing transcript omitted in printing.]

123 In Supreme Court of the United States

October Term, 1956

UNITED STATES OF AMERICA

v.

WALTER KORPAN

Order extending time to file petition for writ of certiorari

October 26, 1956

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 27, 1956.

HAROLD H. BURTON,
Associate Justice of the Supreme Court of the United States.

Dated this 26th day of October 1956.

124

Supreme Court of the United States

No. 596, October Term, 1956

Order allowing certiorari

Filed January 21, 1957

[Title omitted.]

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.